MONTANA

CODE

ANNOTATED

1993

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CHAPTER 1

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Part 1
General Provisions

33-1-101. Short title. This title constitutes the "Montana Insurance Code".

History: En. Sec. 1, Ch. 286, L. 1959; R.C.M. 1947, 40-2601; amd. Sec. 1, Ch. 77, L. 1979.

33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) A person may not transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

History: En. Sec. 9, Ch. 286, L. 1959; Sec. 40-2609, R.C.M. 1947; (2)En. Sec. 10, Ch. 286, L. 1959; Sec. 40-2610, R.C.M. 1947; (3)En. Sec. 11, Ch. 286, L. 1959; Sec. 40-2611, R.C.M. 1947; R.C.M. 1947, 40-2609, 40-2610, 40-2611; amd. Sec. 31, Ch. 457, L. 1987; amd. Sec. 1, Ch. 502, L. 1987; amd. Sec. 1, Ch. 558, L. 1987; amd. Sec. 52, Ch. 613, L. 1989; amd. Sec. 22, Ch. 4, Sp. L. May 1990; amd. Sec. 2, Ch. 727, L. 1991.

Cross-References

Secured transactions — exclusion, 30-9-104.

Securities registration — exemption, 30-10-104 and 33-10-105.

Common trust funds — exclusion, 32-1-708.

Consumer loan businesses — insurance requirements, 32-5-306.

License required of health service corporations, 33-30-108.

33-1-103. Particular provisions prevail. Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

History: En. Sec. 16, Ch. 286, L. 1959; R.C.M. 1947, 40-2616.

Cross-References

Particular laws qualify general, 1-3-225.

33-1-104. General penalty. Each violation of any provision of this code with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 17, Ch. 286, L. 1959; R.C.M. 1947, 40-2617; amd. Sec. 79, Ch. 370, L. 1987; amd. Sec. 5, Ch. 606, L. 1987.

Cross-References

Administrative penalties authorized, 33-1-317.

Part 2
Definitions and Insurance Coverages

33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) (a) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used relating to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

History: En. Secs. 2, 3, 6, 7, 8, Ch. 286, L. 1959; R.C.M. 1947, 40-2602, 40-2603, 40-2606, 40-2607, 40-2608; amd. Sec. 1, Ch. 198, L. 1979; amd. Sec. 4, Ch. 664, L. 1979; amd. Sec. 1, Ch. 202, L. 1983; amd. Sec. 2, Ch. 558, L. 1987; amd. Sec. 1, Ch. 341, L. 1989.

Cross-References

Certificate of authority, Title 33, ch. 2, part 1.

33-1-202. Definitions — entities. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) "Commissioner" means the commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity.

(4) "Resident of this state" means a person who has maintained a principal residence within the state of Montana for a period of not less than 2 consecutive years.

History: En. Secs. 4, 5, Ch. 286, L. 1959; R.C.M. 1947, 40-2604, 40-2605; amd. Sec. 2, Ch. 198, L. 1979; amd. Sec. 2, Ch. 202, L. 1983.

Cross-References

Residence — rules for determining, 1-1-215.

Insurance Department, 2-15-1902.

Commissioner of Insurance — State Auditor as ex officio, 2-15-1903.

33-1-203 and 33-1-204 reserved.

33-1-205. Definitions of kinds of insurance not mutually exclusive. It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in this part, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage may likewise be reasonably included.

History: En. Sec. 72, Ch. 286, L. 1959; R.C.M. 1947, 40-2901.

Cross-References

Combinations of insuring powers — authority, 33-2-108.

Scope of certificate of authority — delimiting combinations of kinds of insurance, 33-2-116.

33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) liability insurance which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) burglary and theft which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock which is insurance against loss or damage to livestock and for services of a veterinary for such animals;

(m) entertainments which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) miscellaneous which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subsections (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be considered to be the same kind of insurance to which it is so incidental and

shall not be subject to provisions of this code applicable to life or disability insurances.

History: En. Sec. 76, Ch. 286, L. 1959; amd. Sec. 49, Ch. 359, L. 1977; R.C.M. 1947, 40-2905.

Cross-References

Medical malpractice — panel to review claims, Title 27, ch. 6.

Product liability insurer — report, 33-2-721.

Casualty insurance — general provisions, Title 33, ch. 23, part 1.

Workers' compensation — plans for providing, Title 39, ch. 71, parts 21 through 23.

Robbery, 45-5-401.

Crimes against property, Title 45, ch. 6.

Elevators — inspection and maintenance, Title 50, ch. 60, part 7.

Boilers and boiler inspectors, Title 50, ch. 74, part 2.

33-1-207. Disability insurance. Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against disablement or expense resulting from sickness and every insurance appertaining thereto. Transaction of disability insurance does not include workers' compensation insurance.

History: En. Sec. 74, Ch. 286, L. 1959; R.C.M. 1947, 40-2903.

Cross-References

Disability insurance — general provisions, Title 33, ch. 22, part 1.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-208. Life insurance. Life insurance is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, benefits that provide reimbursement or payment for long-term home health care or long-term care in a nursing home or other related institution, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance.

History: En. Sec. 73, Ch. 286, L. 1959; R.C.M. 1947, 40-2902; amd. Sec. 1, Ch. 152, L. 1991.

Cross-References

Life insurance — general provisions, Title 33, ch. 20.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-209. Marine protection and indemnity and wet marine insurance. (1) Marine insurance includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

(2) For the purposes of this code wet marine and transportation insurance is that part of marine insurance which includes only:

(a) insurance upon vessels, crafts, and hulls and of interests therein or with relation thereto;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(c) insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

(d) insurance of personal property and interests therein, in course of exportation from or importation into any country and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation while being prepared for and while awaiting shipment and during any delays, storage, transshipment, or reshipment incident thereto.

History: En. Sec. 78, Ch. 286, L. 1959; R.C.M. 1947, 40-2907; amd. Sec. 11, Ch. 467, L. 1981.

33-1-210. Property insurance. Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

History: En. Sec. 75, Ch. 286, L. 1959; R.C.M. 1947, 40-2904.

Cross-References

Property insurance — general provisions, Title 33, ch. 24.

33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to the insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, or criminal mischief or any attempt thereat.

History: En. Sec. 77, Ch. 286, L. 1959; amd. Sec. 50, Ch. 359, L. 1977; R.C.M. 1947, 40-2906; amd. Sec. 3, Ch. 198, L. 1979.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

33-1-212. Title insurance. Title insurance is insurance of owners of property or others having an interest therein or liens or encumbrances thereon against loss by encumbrance, defective titles, invalidity, or adverse claim to title.

History: En. Sec. 79, Ch. 286, L. 1959; R.C.M. 1947, 40-2908.

Cross-References

Title insurance — general provisions, Title 33, ch. 25.

33-1-213 through 33-1-220 reserved.

33-1-221. Nationwide inland marine definition law. Sections 33-1-221 through 33-1-229 may be cited as the "Nationwide Inland Marine Definition Act".

History: En. Sec. 1, Ch. 467, L. 1981.

33-1-222. Purpose. (1) The purpose of 33-1-221 through 33-1-229 is to describe the kinds of risks and coverages which may be classified or identified under state insurance laws as marine, inland marine, or transportation insurance, but 33-1-221 through 33-1-229 do not include all of the kinds of risks and coverages which may be written, classified, or identified under marine, inland marine, or transportation insuring powers. Sections 33-1-221 through 33-1-229 may not be construed to mean that the kinds of risks and coverages described herein are solely marine, inland marine, or transportation insurance in all instances.

(2) Sections 33-1-221 through 33-1-229 may not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and licenses whether used separately, in combination, or otherwise.

History: En. Sec. 2, Ch. 467, L. 1981.

33-1-223. Imports. Imports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Imports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an import and the proper subject of marine, inland marine, or transportation insurance as long as the property remains segregated in such a way that it can be identified and has not become incorporated into and mixed with the general mass of property in the United States; property ceases to be an import and the proper subject of marine, inland marine, or transportation insurance when it has been:

(a) sold and delivered by the importer, factor, or consignee;

(b) removed from its place of storage and placed on sale as part of an importer's stock in trade at a point of sale or distribution; or

(c) delivered for manufacture, processing, or change in form to premises of the importer or another, to be used for such purposes.

History: En. Sec. 3, Ch. 467, L. 1981.

33-1-224. Exports. Exports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Exports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an export and the proper subject of marine, inland marine, or transportation insurance when designated or while being prepared for export and remains an export unless diverted for domestic trade. If the property is diverted for domestic trade, the provisions of 33-1-225 apply. This

section does not apply to long-established methods of insuring certain commodities such as cotton.

History: **En. Sec. 4, Ch. 467, L. 1981.**

33-1-225. Domestic shipments. Domestic shipments may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Domestic shipments on consignment for sale, distribution, exhibit, trial, approval, or auction may be covered while in transit, while in the custody of others, and while being returned, except that the policy may not cover property while it is on premises owned, leased, or operated by the consignor.

(2) Domestic shipments not on consignment may be covered if the coverage of the issuing companies includes hazards of transportation beginning and ending within the United States. Such shipments are not covered at the manufacturing premises or after arrival at premises owned, leased, or operated by the assured or the purchaser.

History: **En. Sec. 5, Ch. 467, L. 1981.**

33-1-226. Instrumentalities of transportation and commerce. Bridges, tunnels, and other instrumentalities of transportation and communication (excluding buildings and improvements, furniture, furnishings, fixed contents, and supplies held in storage) may be covered by marine, inland marine, and transportation policies. This category includes:

(1) bridges, tunnels, and other similar instrumentalities, including auxiliary facilities and equipment attendant thereto;

(2) piers, wharves, docks, slips, drydocks, and marine railways;

(3) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(4) power transmission, telephone, and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(5) radio and television communication equipment in use as such, including towers and antennas with auxiliary equipment, and appurtenant electrical operating and control apparatus; and

(6) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

History: **En. Sec. 6, Ch. 467, L. 1981.**

33-1-227. Personal property. Risks generally covered by personal property floaters covering individuals or items of personal property may be covered by marine, inland marine, and transportation policies. This category includes:

(1) personal effects floater policies;

(2) personal property floaters;

(3) government service floaters;

(4) personal fur floaters;

(5) personal jewelry floaters;

(6) wedding present floaters for a period not exceeding 90 days after the date of the wedding;

(7) silverware floaters;

(8) fine arts floaters covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit;

(9) stamp and coin floaters;

(10) musical instrument floaters. For purposes of this section, radios, televisions, record players, and combinations thereof are not musical instruments.

(11) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use) covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(12) installment sales and leased property policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract, or installment sales contract or leased but excluding motor vehicles designed for highway use. Such policies must cover property in transit but shall not extend beyond the termination of the seller's or lessor's interest; and

(13) live animal floaters.

History: **En. Sec. 7, Ch. 467, L. 1981.**

33-1-228. Commercial property. Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. Such policies may include coverage of such furniture, fixtures, and tenant assured's interest in such improvements of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel about with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) salesmen's samples floaters;

(7) exhibition policies on property while it is on exhibition and in transit to or from such exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for an awaiting specific installation, building, renovating, or repairing. Such coverage is limited to builders' risks or installation risks where perils in addition to fire and extended coverage are to be insured. If written for the

account of the owner, the coverage ceases upon completion of work and acceptance thereof; or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use) covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use such property for which it was manufactured or created. Such policies may not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(11) property in transit to or from and in the custody of bailees (not owned, controlled, or operated by the bailor), but such policies may not cover the bailee's property at his premises;

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the seller's or lessor's interest. This subsection does not include machinery and equipment under certain "lease-back" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer, if:

(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as such;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection;

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored therein;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

(23) electronic data processing policies.

History: En. Sec. 8, Ch. 467, L. 1981.

33-1-229. Exceptions. Unless otherwise permitted, nothing in 33-1-223 through 33-1-229 may be construed to permit marine, inland marine, or transportation insurance policies to cover:

(1) storage of an assured's merchandise, except as specifically provided;

(2) merchandise in the course of manufacture which is the property of and on the premises of the manufacturer;

(3) furniture, fixtures, and improvements to buildings; or

(4) money or securities in safes, vaults, safety deposit vaults, or banks or on the assured's premises, except while in the course of transportation.

History: En. Sec. 9, Ch. 467, L. 1981.

Part 3

Commissioner and Department General Powers and Duties

Part Cross-References

Jurisdiction of courts, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

33-1-301. Insurance department — control — appropriations. (1) The insurance department shall be under the control and supervision of the commissioner.

(2) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702(2), (3).

Cross-References

Insurance Department — creation, 2-15-1902.

State Auditor — ex officio Insurance Commissioner, 2-15-1903.

33-1-302. Commissioner's seal. (1) The commissioner shall have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner shall bear his seal, except that the commissioner may, in his discretion, omit the seal as to licenses.

History: En. Sec. 22, Ch. 286, L. 1959; R.C.M. 1947, 40-2703.

Cross-References

The Great Seal of the State of Montana — description, 1-1-501.

33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who is in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for the purposes that the commissioner designates.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to the commissioner.

(4) The commissioner may appoint or employ examiners to conduct or assist in examinations of insurers and others provided for under the code. Examiners must be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner shall appoint or employ insurance protection analysts for the purpose of ensuring that insurers and their representatives comply with market regulations provided by law.

(6) The commissioner may appoint and employ a field investigator whose primary duty it is, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

(7) The commissioner may appoint a chief clerk for the insurance department and employ other assistants and clerks as may be necessary to assist the commissioner properly to discharge the duties imposed under this code.

(8) The commissioner may at any time terminate the appointment, designation, or employment of any deputy, actuary, chief clerk, or other employee.

(9) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, actuarial, technical, or other professional services as the commissioner may require for the discharge of duties.

(10) The compensation of the commissioner's personal staff, as defined in Title 2, chapter 18, part 1, shall be as fixed by the commissioner but in the aggregate may not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose.

History: En. Sec. 23, Ch. 286, L. 1959; R.C.M. 1947, 40-2704; amd. Sec. 1, Ch. 4, L. 1979; amd. Sec. 4, Ch. 198, L. 1979; amd. Sec. 1, Ch. 165, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 165 inserted (5) requiring Commissioner to provide analysts to ensure compliance with market regulations; and made minor changes in style.

Cross-References

Deputies of public officers, Title 2, ch. 16, part 3.

State employee classification, compensation, and benefits, Title 2, ch. 18.

Personal staff, 2-18-104.

33-1-304. Delegation of authority — responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of his department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner shall be responsible for the official acts of his deputy, assistant, examiner, or employee acting in the commissioner's name and by his authority.

History: En. Sec. 25, Ch. 286, L. 1959; R.C.M. 1947, 40-2706.

Cross-References

Powers of deputies, 2-16-303.

33-1-305. Conflicts of interest and certain compensation prohibited. (1) The commissioner or any deputy, examiner, assistant, or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy.

(2) The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Interest in certain contracts — prohibition, 2-2-201.

Official misconduct — crime, 45-7-401.

33-1-306. Dual contracts permitted. As to such matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, attorneys, or other technicians who are independently practicing their professions even though similarly employed or retained by insurers or others.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

33-1-307 through 33-1-310 reserved.

33-1-311. General powers and duties. (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of this code.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner has additional powers and duties as provided by other laws of this state.

(6) The department is a criminal justice agency as defined in 44-5-103.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(1) thru (3), (5); amd. Sec. 1, Ch. 99, L. 1989; amd. Sec. 2, Ch. 165, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 165 inserted (3) requiring administration of the Department to ensure protection of insurance consumers; and made minor changes in style.

Cross-References

Deductible insurance plan for state buildings — cooperation, 2-17-104.

Fire departments — report, 19-18-511.

Development credit corporations — report, 32-4-306.

License required of health service corporations, 33-30-108.

Unclaimed property — identification, 70-9-314.

Inheritance and estate tax valuations, 72-16-417.

33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of his official transactions, examinations, investigations, and proceedings and keep such records in his office. Such records and insurance filings in his office shall be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish his certificate as to the authority of any person to transact insurance, and such certificate shall be evidence of the facts set forth therein.

(3) Copies of records or documents in his office certified to by the commissioner shall be received in evidence in all courts as if they were the originals.

History: (1)En. Sec. 26, Ch. 286, L. 1959; Sec. 40-2707, R.C.M. 1947; (2), (3)En. Sec. 27, Ch. 286, L. 1959; Sec. 40-2708, R.C.M. 1947; R.C.M. 1947, 40-2707, 40-2708.

Cross-References

Records of officers — public inspection allowed, 2-6-104.

Evidence consisting of public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

33-1-313. Rules — notice, hearing, and penalty. (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.

History: En. Sec. 29, Ch. 286, L. 1959; R.C.M. 1947, 40-2710; amd. Sec. 80, Ch. 370, L. 1987; amd. Sec. 6, Ch. 606, L. 1987.

Cross-References

Applicability of MAPA to agencies, 2-3-102, 2-4-102.

Montana Administrative Procedure Act (MAPA), Title 2, ch. 4.

Rules for organization or procedure of agency, 2-4-201.

Notice and hearing for rule adoption, 2-4-302.

Requisites for validity of rule, 2-4-305.

Publication of rule required, 2-4-306.

Administrative penalties, 33-1-317.

Ten days' notice required, 33-1-703.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-1-314. Orders and notices. (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

(2) Every such order shall state its effective date and shall concisely state:

(a) its intent or purpose;

(b) the grounds on which based;

(c) the provisions of this code pursuant to which action is so taken or proposed to be taken, but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.

History: En. Sec. 30, Ch. 286, L. 1959; R.C.M. 1947, 40-2711.

33-1-315. Witnesses — production of records — subpoena — failure to respond — perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in

which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.

(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.

History: En. Sec. 37, Ch. 286, L. 1959; R.C.M. 1947, 40-2718; amd. Sec. 5, Ch. 198, L. 1979.

Cross-References

Travel allowance — mileage, 2-18-503, 2-18-504.

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Subpoena of witnesses, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Disobedience of subpoena, 26-2-104.

Witness fees, Title 26, ch. 2, part 5.

Perjury — crime, 45-7-201.

Misdemeanor, 46-18-212.

33-1-316. Testimony compelled — immunity from prosecution. A person may not be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that the person's testimony or the evidence required may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in testimony or evidence given under this part.

History: En. Sec. 38. Ch. 286, L. 1959; R.C.M. 1947, 40-2719; amd. Sec. 1, Ch. 246, L. 1991; amd. Sec. 1, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of second sentence, after "However", deleted "compelled" and after "evidence" inserted "compelled following a claim of privilege against self-incrimination", near middle of third sentence, after "person", substituted "testifies" for "is compelled to testify", near end of fourth sentence, before "testimony", deleted "the compelled" and after "evidence" inserted "given under this part"; and made minor changes in style.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of $25,000 upon a person found to have violated a provision of this code or regulation promulgated by the commissioner, except that the fine imposed upon insurance producers or adjusters may not exceed $5,000 per violation. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana. Imposition of a fine under this section is an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(4); amd. Sec. 1, Ch. 278, L. 1987; amd. Sec. 81, Ch. 370, L. 1987; amd. Sec. 7, Ch. 606, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 164, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 164 at end of first sentence increased fine on insurance producers or adjusters from a maximum of $500 to a maximum of $5,000 per violation; and made minor changes in style.

Cross-References

Appeal — Lewis and Clark County District Court, 33-1-711.

Offenses without criminal intent — limitation, 45-2-104.

33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-501; 33-14-201; chapters 2, 16 through 18, and 30 of this title; or part 4 of chapter 25 of this title; or any rule or order issued under this code, he may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearing examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must issue within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under this

subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under this code.

History: En. Sec. 1, Ch. 513, L. 1987.

Part 4

Examinations by Department

33-1-401. Examination of insurers. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as the commissioner considers advisable. The commissioner shall examine each authorized insurer not less frequently than every 5 years.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making an examination under this part of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. After January 1, 1994, the reports may only be accepted if:

(a) the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(b) the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) For purposes of completing an examination of any company under this part, the commissioner may examine or investigate any person or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

History: En. Sec. 32, Ch. 286, L. 1959; R.C.M. 1947, 40-2713; amd. Sec. 39, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in second sentence of (1) substituted "authorized" for "domestic" and increased frequency of examination from 3 years to 5 years and deleted third and fourth sentences that read: "Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact insofar as the transactions of the attorney-in-fact relate to the insurer"; substituted (3) regarding acceptance of another examination report and establishing conditions for acceptance for former (3) that read: "In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States"; inserted (4) allowing examination of any person or person's business when necessary to the examination of the company; and made minor changes in style.

Cross-References

Certificates of authority, Title 33, ch. 2, part 1.

Unclaimed property — identification, 70-9-314.

33-1-402. Examination of insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as he considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) an insurance producer, surplus lines insurance producer, general insurance producer, or adjuster;

(2) a person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management of the domestic insurer, as voting trustee or otherwise;

(4) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business.

History: En. Sec. 33, Ch. 286, L. 1959; R.C.M. 1947, 40-2714; amd. Sec. 22, Ch. 537, L. 1987; amd. Sec. 7, Ch. 713, L. 1989.

33-1-403. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 34, Ch. 286, L. 1959; R.C.M. 1947, 40-2715; amd. Sec. 1, Ch. 713, L. 1989.

33-1-404 through 33-1-407 reserved.

33-1-408. Conduct of examinations — records — correction of accounts — appraisals. (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension,

revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate.

History: En. Sec. 31, Ch. 596, L. 1993.

33-1-409. Examination reports — hearings — confidentiality — publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination must be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination

report as private and confidential information for a period of 30 days except to the extent provided in subsection (2). After 30 days, the commissioner may open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access shall agree in writing, prior to receiving the information, to treat the information in the confidential manner required by this section unless the prior written consent of the company to which it pertains has been obtained.

History: En. Sec. 32, Ch. 596, L. 1993.

33-1-410. Conflict of interest. (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest with, is affiliated with the management of, or owns a pecuniary interest in any person subject to examination under this part. This section may not be construed to automatically preclude an examiner from being:

(a) a policyholder or claimant under an insurance policy;

(b) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) an investment owner in shares of regulated diversified investment companies; or

(d) a settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this part.

History: En. Sec. 33, Ch. 596, L. 1993.

33-1-411. Destruction of records — hindrance of examination — penalty. Any director, officer, agent, or employee of any company who for the purpose of hindering any examination conducted pursuant to this part destroys any books, records, or documents required to be kept by law shall be punished by a fine of not more than $1,000. After notice and hearing in accordance with Title 33, chapter 1, part 7, the commissioner may revoke the certificate of authority of such company.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(3); amd. Sec. 6, Ch. 198, L. 1979.

33-1-412. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(1), (2), (4) thru (7).

33-1-413. Examination expense — lien. (1) Upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization, each person so examined, other than as to examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the commissioner. Such an account may be so presented periodically during the course of the examination or at the termination of the examination as the commissioner deems proper. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3) If any such person fails to pay the charges and expenses, as referred to in subsection (1) above, they shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963; R.C.M. 1947, 40-2717.

Cross-References

Attorney General — duties, 2-15-501.

Examination of insurance producers, managers, and promoters, 33-1-402.

Liens — definition, 71-3-101.

Ordering of liens, 71-3-115.

Part 5
Approval of Forms

Part Cross-References

Motor club service companies — approval of service contract forms, 61-12-308.

33-1-501. Filing and approval of forms. (1) An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and the regulatory official of the state of domicile of the insurer, if required. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) An order of the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form specified to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are, in the commissioner's opinion, not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request.

History: En. Secs. 258, 271, Ch. 286, L. 1959; R.C.M. 1947, 40-3701(part), 40-3714; amd. Sec. 1, Ch. 303, L. 1981; amd. Sec. 1, Ch. 518, L. 1983; amd. Sec. 1, Ch. 156, L. 1989; amd. Sec. 2, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of (1), after "contract form", inserted "certificate, enrollment form"; in (4), near beginning after "may", deleted "by order" and near middle, after "specified", deleted "in the order"; and made minor changes in style.

Cross-References

Rating organization — definition, 33-16-102.

33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner in his discretion;

(3) has any title, heading, or other indication of its provisions which is misleading;

(4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible;

(5) contains any provision that violates the provisions of 49-2-309.

History: En. Sec. 272, Ch. 286, L. 1959; R.C.M. 1947, 40-3715; amd. Sec. 1, Ch. 122, L. 1987; amd. Sec. 10, Ch. 699, L. 1991.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Language simplification requirements, 33-15-321 through 33-15-329.

Part 6
Service of Process

33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner and his successors in office as its attorney to receive service of legal process issued against it in Montana. The appointment shall be made on a form as designated and furnished by the commissioner. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Montana any contract made by the insurer or obligations arising therefrom.

(2) Each insurer at time of application for a certificate of authority shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(1), (3).

33-1-602. Service of process — foreign, alien, or domestic. Service of such process against a foreign or alien insurer shall be made only by service of process upon the commissioner or upon a deputy or other person in charge of his office during his absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(2).

Cross-References

Service upon a corporation, Rule 4D(2)(e), M.R.Civ.P. (see Title 25, ch. 20).

Attorney-in-fact — reciprocal insurer, 33-5-104, 33-5-201.

33-1-603. Serving process — time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney, pursuant to 33-1-601, shall be served upon the commissioner or upon his deputy or other person in charge of his office during his absence. At the time of service, the plaintiff shall pay to the commissioner $10, taxable as costs in the action. Upon receiving such service, the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) Where process is served upon the commissioner as an insurer's attorney, the insurer shall have 30 days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer.

History: En. Sec. 64, Ch. 286, L. 1959; amd. Sec. 1, Ch. 321, L. 1977; R.C.M. 1947, 40-2819.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-604 through 33-1-610 reserved.

33-1-611. Unauthorized Insurers Process Act — interpretation. (1) Sections 33-1-611 through 33-1-616 constitute and may be cited as the "Unauthorized Insurers Process Act".

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 178, Ch. 286, L. 1959; R.C.M. 1947, 40-3403.

Cross-References

Suits by unauthorized insurers prohibited, 33-2-105.

Actions against insurer — venue — service of process, 33-2-314.

33-1-612. Commissioner — process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer arising out of any such contract or transaction, and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

History: En. Sec. 179, Ch. 286, L. 1959; R.C.M. 1947, 40-3404.

33-1-613. Service of process — criteria mandating designation of commissioner. (1) Service of process upon any such insurer pursuant to 33-1-612 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by plaintiff's attorney to the defendant at its last known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(2) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if:

(a) served upon any person within this state who in this state on behalf of such insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of such process is sent within 10 days thereafter by registered or certified mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

History: En. 40-3405 by Sec. 180, Ch. 286, L. 1975; R.C.M. 1947, 40-3405.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

Fee for Commissioner's service of process, 33-1-603.

33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus lines insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action.

History: En. Sec. 181, Ch. 286, L. 1959; R.C.M. 1947, 40-3406; amd. Sec. 23, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-615. Defense of action by unauthorized insurer. (1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under 33-1-612 and 33-1-613, such insurer shall:

(a) procure a certificate of authority to transact insurance in this state; or

(b) deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

(2) The court in any action or proceeding in which service is made in the manner provided in 33-1-613 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) above and to defend such action.

(3) Nothing in subsection (1) above is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in 33-1-613 hereof, on the ground either:

(a) that such unauthorized insurer has not done any of the acts enumerated in 33-1-612; or

(b) that the person on whom service was made pursuant to 33-1-613(2) was not doing any of the acts therein enumerated.

History: En. Sec. 182, Ch. 286, L. 1959; R.C.M. 1947, 40-3407.

Cross-References

Motion to quash or set aside service, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

33-1-616. Attorney's fee. In any action against an unauthorized insurer under this Unauthorized Insurers Process Act, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the insurance contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. The fee shall not exceed one-third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

History: En. Sec. 183, Ch. 286, L. 1959; R.C.M. 1947, 40-3408.

Cross-References

Attorney fees, 25-10-301.

Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

Factual basis for punitive or exemplary damages, 27-1-220.

Part 7
Hearings and Appeals

Part Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

33-1-701. Hearings — discretion — written demand. (1) The commissioner may hold hearings for any purpose within the scope of this code deemed by him to be necessary.

(2) The commissioner shall hold a hearing if required by any provision or upon written demand therefor by a person aggrieved by any act, threatened act, or failure of the commissioner to act or by any report, rule, or order of the commissioner, other than an order for the holding of a hearing or an order on hearing or pursuant thereto. Any such demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and unless postponed by mutual consent, such hearing shall be held within 30 days after receipt by the commissioner of demand therefor.

(3) If within such 30-day period the commissioner does not either grant the hearing or issue his order refusing the hearing as to such previous report, rule, or order as to which such person so claims to be aggrieved, then the hearing shall thereby be deemed to have been refused.

History: En. Sec. 39, Ch. 286, L. 1959; R.C.M. 1947, 40-2720.

Cross-References

Contested administrative proceeding — notice requirements, 2-4-601.

33-1-702. Stay of action. (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within 10 days after such order is delivered shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed under:

(a) an order on hearing;

(b) an order pursuant and supplemental to an order on hearing; or

(c) an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court for Lewis and Clark County for a stay of the commissioner's proposed action.

History: En. Sec. 40, Ch. 286, L. 1959; R.C.M. 1947, 40-2721.

33-1-703. Notice of hearing. Not less than 10 days in advance, the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

History: En. Sec. 41, Ch. 286, L. 1959; R.C.M. 1947, 40-2722.

Cross-References

Notice requirements — contested administrative hearings, 2-4-601.

33-1-704. Hearing procedure. (1) All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests will be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Except as provided in 33-31-404, rules of pleading need not be observed at any hearing, but the rules of evidence must be observed.

(5) Upon written request seasonably made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(1) thru (5); amd. Sec. 7, Ch. 198, L. 1979; amd. Sec. 32, Ch. 457, L. 1987; amd. Sec. 32, Ch. 798, L. 1991.

Cross-References

Hearing procedure — Montana Administrative Procedure Act, 2-4-612.

Record of hearing — contents, 2-4-614.

33-1-705. Rehearing. Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the same, the commissioner may, in his discretion, grant a rehearing or reargument of the matters involved in such hearing. Notice of such rehearing or reargument shall be given as provided in 33-1-703.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(6).

33-1-706. Order on hearing. (1) In conducting any such hearing, the commissioner shall sit in a quasi-judicial capacity. Within 30 days after termination of the hearing or of any rehearing thereof or reargument thereon, he shall make his order on hearing covering matters involved in such hearing and in any rehearing or reargument thereof and shall give a copy of such order to the same persons given notice of the hearing.

(2) The order shall contain a concise statement of the facts as found by the commissioner, of his conclusions therefrom, and of the matters required by 33-1-314.

(3) The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

History: En. Sec. 43, Ch. 286, L. 1959; R.C.M. 1947, 40-2724.

Cross-References

"Quasi-judicial function" defined, 2-15-102.

33-1-707 through 33-1-710 reserved.

33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.

(4) Upon receipt of the transcripts and evidence, the court shall hear the matter as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs must be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper.

(8) This section does not apply to appeals as to matters covered by chapter 16.

History: En. Sec. 44, Ch. 286, L. 1959; R.C.M. 1947, 40-2725; amd. Sec. 1, Ch. 119, L. 1987; amd. Sec. 24, Ch. 537, L. 1987; amd. Sec. 8, Ch. 713, L. 1989; amd. Sec. 1, Ch. 798, L. 1991.

Cross-References

Costs in civil actions, Title 25, ch. 10.

Appeal to Supreme Court, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

Parts 8 through 10 reserved

Part 11

Jurisdiction of Providers of Health Care Benefits

Part Cross-References

Health service corporations, Title 33, ch. 30.

33-1-1101. Short title. This part may be cited as the "Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Act".

History: En. Sec. 1, Ch. 497, L. 1983.

33-1-1102. Authority and jurisdiction of insurance department. Notwithstanding any other provision of law and except as provided in this part, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech-language pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government.

History: En. Sec. 2, Ch. 497, L. 1983; amd. Sec. 6, Ch. 413, L. 1989.

33-1-1103 through 33-1-1110 reserved.

33-1-1111. How to show jurisdiction. A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services.

History: En. Sec. 3, Ch. 497, L. 1983.

Cross-References

Regulation of medicine, Title 37, ch. 3.

Regulation of dentistry and dental hygiene, Title 37, ch. 4.

Regulation of optometry, Title 37, ch. 10.

Regulation of physical therapy, Title 37, ch. 11.

Regulation of the practice of chiropractic, Title 37, ch. 12.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Regulation of psychologists, Title 37, ch. 17.

Regulation of denturitry, Title 37, ch. 29.

33-1-1112. Subject to state laws. A person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government is subject to all appropriate provisions of this code regarding the conduct of its business.

History: En. Sec. 5, Ch. 497, L. 1983.

33-1-1113. Examination. A person or entity which is unable to show under 33-1-1111 that it is subject to the jurisdiction of another agency of this or another state or a subdivision thereof or the federal government must submit to an examination by the commissioner to determine the organization and solvency of the person or entity and to determine whether or not such person or entity complies with the applicable provisions of this code.

History: En. Sec. 4, Ch. 497, L. 1983.

33-1-1114. Disclosure. (1) A production agency or administrator that advertises, sells, transacts, or administers the coverage in this state described in 33-1-1102 and that is required to submit to an examination by the insurance commissioner under 33-1-1113 shall, if such coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or nonprofit health service corporation, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(2) An administrator that advertises or administers the coverage in this state described in 33-1-1102 and is required to submit to an examination by the commissioner under 33-1-1113 shall advise any production agency of the

elements of the coverage, including the amount of "stop-loss" insurance in effect.

History: En. Sec. 6, Ch. 497, L. 1983.

CHAPTER 2

REGULATION OF INSURANCE COMPANIES

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Part 1
Authorization of Insurers

33-2-101. Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall have or maintain in Montana any office, representative, or other facilities for the solicitation or servicing of any kind of

insurance in any other state unless it is then authorized to transact the same kind of insurance in this state.

History: **En. Sec. 46, Ch. 286, L. 1959; R.C.M. 1947, 40-2801.**

Cross-References

Examination prior to initial issuance of certificate, 33-1-401.

Lack of or revocation of certificate — grounds for conservation or liquidation of assets — alien or foreign insurer, 33-2-1379.

Membership in Montana Insurance Guaranty Association — condition of authority to operate in state, 33-10-103, 33-10-203.

Motor club service companies — licensing, 61-12-302.

33-2-102. Exceptions to certificate of authority requirement. A certificate of authority shall not be required of an insurer, not otherwise authorized in this state, as to the following transactions:

(1) transactions relative to its policies lawfully written in Montana or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in Montana;

(2) transactions relative thereto subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in Montana at time of issuance, and which coverage was lawfully solicited, written, and delivered outside Montana;

(3) transactions pursuant to surplus lines coverages lawfully written pursuant to part 3 of this chapter;

(4) reinsurance, except as to domestic reinsurers.

History: **En. Sec. 47, Ch. 286, L. 1959; R.C.M. 1947, 40-2802.**

33-2-103. Admission for investment only. A foreign insurer may transact business in this state without certificate of authority for the purpose and to the extent only of investing its funds in Montana real estate or in securities secured thereby by complying with the applicable laws of this state other than this code. Such an insurer shall not be subject to any other provision of this code.

History: **En. Sec. 48, Ch. 286, L. 1959; R.C.M. 1947, 40-2803.**

Cross-References

Securities regulation, Title 30, ch. 10.

33-2-104. Representing or aiding unauthorized insurer prohibited. (1) No person shall in this state directly or indirectly act as insurance producer for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

(2) This section shall not apply to:

(a) acceptance of service of process by the commissioner under 33-1-613;

(b) surplus lines insurance and other transactions as to which certificate of authority is not required of an insurer as stated in 33-2-102.

(3) Any person violating this section shall upon conviction thereof be guilty of a felony.

History: **En. Sec. 176, Ch. 286, L. 1959; R.C.M. 1947, 40-3401; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Tax and report — due of insured of unauthorized insurer, 33-2-706.

Felony, 46-18-213.

33-2-105. Suits by unauthorized insurers prohibited. Except as to transactions permitted under 33-2-102, no unauthorized insurer shall institute or file or cause to be instituted or filed any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until such insurer has obtained a certificate of authority to transact such insurance in this state.

History: En. Sec. 177, Ch. 286, L. 1959; R.C.M. 1947, 40-3402; amd. Sec. 8, Ch. 198, L. 1979.

Cross-References

Unauthorized Insurers Process Act, 33-1-611 through 33-1-616.

Tax and report — due of insured of unauthorized insurer, 33-2-706.

33-2-106. General eligibility of insurers. (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may hereafter be formed as a domestic insurer under this code.

(2) No foreign insurer shall be authorized to transact insurance in Montana which does not maintain reserves as required by part 5 of this chapter applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States, or which transacts business anywhere in the United States on the assessment plan, stipulated premium plan, or any similar plan.

(3) No foreign insurer which is directly or indirectly owned or controlled in whole or in substantial part by any government or governmental agency shall be authorized to transact insurance in Montana unless it was so owned and first so authorized prior to January 1, 1957. Membership or subscribership in a mutual or reciprocal insurer by virtue of being a policyholder thereof, ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

History: En. Sec. 49, Ch. 286, L. 1959; R.C.M. 1947, 40-2804.

Cross-References

Examination prior to issuance of initial certificate, 33-1-401.

33-2-107. Name — dissimilar. (1) No insurer shall be authorized to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

(2) No life insurer shall be authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this state.

(3) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(4) In case of conflict of names between two insurers or a conflict otherwise prohibited under the foregoing subsections of this section, the commissioner may permit or require the more recently authorized insurer to use in Montana such supplementation or modification of its name or such business name as may reasonably be necessary to avoid such conflict.

History: En. Sec. 50, Ch. 286, L. 1959; R.C.M. 1947, 40-2805.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and 33-25-213, an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer.

History: En. Sec. 51, Ch. 286, L. 1959; R.C.M. 1947, 40-2806; amd. Sec. 16, Ch. 519, L. 1985.

Cross-References

Reciprocal insurers, Title 33, ch. 5.

33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as required under 33-2-110:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	50,000
Property	400,000
Marine	400,000
Casualty	
All lines except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty, or surety)	800,000

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 3, and domestic reciprocal insurers shall be governed by chapter 5.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

(5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum capital or surplus required for credit life and disability pursuant to subsection (1).

History: En. Sec. 52, Ch. 286, L. 1959; amd. Sec. 1, Ch. 319, L. 1977; R.C.M. 1947, 40-2807(part); amd. Sec. 2, Ch. 303, L. 1981; amd. Sec. 3, Ch. 202, L. 1983.

33-2-110. Special surplus required. In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by 33-2-109, special surplus shall be possessed by insurers as follows:

(1) All stock insurers and mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than 5 years or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than 5 years when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than 100% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal) otherwise required under 33-2-109 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance as authorized insurers in one or more states of the United States for more than 5 years shall possess, when first authorized in this state, surplus or additional surplus equal to not less than 50% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) otherwise required under 33-2-109.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than $100,000, in addition to the capital (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) required by 33-2-109. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subsections (1) and (2) of this section.

History: En. Sec. 53, Ch. 286, L. 1959; R.C.M. 1947, 40-2808; amd. Sec. 3, Ch. 303, L. 1981.

33-2-111. Deposit requirement. (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit shall be in the amount of $100,000;

(b) foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, among other reasonable purposes of protection of policyholders and/or creditors, of the protection of all its policyholders or policyholders and creditors in Montana;

(c) alien insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers shall be made as provided in 33-2-531.

(4) Deposits made in this state shall further be subject to the provisions of part 6 of this chapter.

History: En. Sec. 54, Ch. 286, L. 1959; R.C.M. 1947, 40-2809; amd. Sec. 1, Ch. 238, L. 1979.

33-2-112. Management qualifications and affiliations. The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by him to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith.

History: En. Sec. 55, Ch. 286, L. 1959; R.C.M. 1947, 40-2810.

33-2-113 and 33-2-114 reserved.

33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application therefor accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of December 31 next preceding, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that such rates as applicable will be those promulgated by designated rating organizations authorized to file such rates in this state on behalf of the insurer.

History: En. Sec. 56, Ch. 286, L. 1959; R.C.M. 1947, 40-2811.

33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority. If he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner.

History: **En. Sec. 57, Ch. 286, L. 1959; R.C.M. 1947, 40-2812; amd. Sec. 4, Ch. 303, L. 1981.**

33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority. (1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated; subject, however, to continuance of the certificate by the insurer each year by payment prior to May 15 of the continuation fee provided in 33-2-708.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any such failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in such expiration and upon payment by the insurer of the fee for reinstatement in addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers.

History: **En. Sec. 58, Ch. 286, L. 1959; R.C.M. 1947, 40-2813; amd. Sec. 1, Ch. 139, L. 1987.**

Cross-References

Failure to report — revoke or refuse to reinstate certificate, 33-2-701.

33-2-118. Mandatory revocation or suspension of certificate of authority. (1) The commissioner shall suspend or revoke an insurer's certificate of authority if:

(a) such action is required by any provision of this code;

(b) the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) Except in cases of insolvency or impairment of required capital or surplus or suspension or revocation by another state as referred to in subsection (1)(c) above, the commissioner shall give the insurer at least 15 days' notice in advance of any such suspension or revocation under this section.

History: **En. Sec. 59, Ch. 286, L. 1959; R.C.M. 1947, 40-2814.**

Cross-References

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to the third person, or without just cause compels the insured or claimant to accept less than the amount due him or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

History: En. Sec. 60, Ch. 286, L. 1959; R.C.M. 1947, 40-2815; amd. Sec. 5, Ch. 303, L. 1981; amd. Sec. 2, Ch. 518, L. 1983; amd. Sec. 25, Ch. 537, L. 1987; amd. Sec. 46, Ch. 613, L. 1989; amd. Sec. 1, Ch. 620, L. 1989.

Cross-References

Hearings by Commissioner, Title 33, ch. 1, part 7.

Grounds for rehabilitation of insurer, 33-2-1331.

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-120. Notice of suspension or revocation — effect upon producer's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall forthwith give notice thereof to the insurer and to its insurance producers in this state of record in the commissioner's office.

(2) Such suspension or revocation shall likewise automatically suspend or revoke, as the case may be, the authority of all such insurance producers to act as insurance producers of the insurer in this state, and the commissioner shall so state in the notice to insurance producers provided for in subsection (1).

(3) In his discretion the commissioner may also publish notice of such revocation in one or more newspapers of general circulation published in this state.

History: En. Sec. 61, Ch. 286, L. 1959; R.C.M. 1947, 40-2816; amd. Sec. 1, Ch. 713, L. 1989.

33-2-121. Duration of suspension — insurer's obligations — reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as is fixed by the commissioner in the order of suspension and shall continue until rescinded or otherwise removed by the commissioner. During the suspension the commissioner may shorten the period thereof by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) If within such period of suspension the certificate of authority has not been terminated, the insurer's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its insurance producers in this state to represent the insurer shall likewise reinstate.

(5) The commissioner shall forthwith notify both the insurer and its insurance producers in this state, as shown by his records, of such reinstatement.

History: En. Sec. 62, Ch. 286, L. 1959; R.C.M. 1947, 40-2817; amd. Sec. 1, Ch. 534, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-2-122. Rights and duties of foreign insurer. Except as otherwise provided in this chapter, a foreign insurer which has a certificate of authority under this chapter shall, until its certificate is revoked or withdrawn, enjoy the same but no greater rights and privileges as a domestic insurer and shall be subject to the same duties, restrictions, penalties, and liabilities imposed upon a domestic insurer of like character.

History: En. Sec. 1, Ch. 345, L. 1987.

33-2-123 through 33-2-125 reserved.

33-2-126. Admission as domestic insurer — conversion to foreign insurer. (1) An insurer organized under the laws of any other state and admitted to do business in this state for the purposes of writing insurance may become a domestic insurer by complying with all of the laws relative to the organization and licensing of a domestic insurer of the same type, designating its principal place of business in this state, and paying the filing fees specified in 33-2-708. An insurer complying with this subsection is entitled to a certificate of redomestication and a certificate of authority to transact business in this state, is subject to the authority and jurisdiction of this state, and has the same rights and obligations as other domestic insurers.

(2) A domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact insurance. If the insurer is otherwise qualified, the commissioner shall approve a proposed transfer unless he determines a transfer is not in the interest of the policyholders of this state. Upon a transfer, the insurer ceases to be a domestic insurer.

History: En. Sec. 1, Ch. 132, L. 1991.

33-2-127. Effects of transfer of domicile. The certificate of authority, producers' appointments and licenses, policy forms, rates, and other items that the commissioner allows, in his discretion, that are in existence at the time an insurer admitted to transact insurance in this state transfers its corporate domicile to this or any other state continue in full force and effect upon transfer if the insurer remains qualified to transact insurance in this state. All rates and outstanding policies of a transferring insurer remain in full force and effect, and policies need not be endorsed as to the new name of the company or its domicile unless required by the commissioner. A transferring insurer either shall file new policy forms for use in this state with the commissioner on or before the effective date of the transfer or may use existing policy forms with the appropriate endorsements, as allowed by the commissioner. A transferring insurer shall notify the commissioner of the proposed transfer and shall promptly file any resulting amendments to corporate documents required to be filed with the commissioner.

History: En. Sec. 2, Ch. 132, L. 1991.

33-2-128. Authority to promulgate rules and regulations. The commissioner may promulgate rules and regulations to carry out the purposes of 33-2-126 and 33-2-127.

History: En. Sec. 3, Ch. 132, L. 1991.

Part 2

State of Entry — Trusteed Assets of Alien Insurers

Part Cross-References

Annual report — alien insurers — additional requirements, 33-2-701.

33-2-201. Scope of part. This part applies to all alien insurers using Montana as a state of entry to transact insurance in the United States.

History: En. Sec. 599, Ch. 286, L. 1959; R.C.M. 1947, 40-5201.

33-2-202. Required deposit of assets. (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under 33-2-111(1) and shall consist of cash and/or securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under part 8 of this chapter.

(3) Such a deposit may be referred to as "trusteed assets".

History: En. Sec. 600, Ch. 286, L. 1959; R.C.M. 1947, 40-5202.

33-2-203. Existing trusts. All trusts of trusteed assets created before January 1, 1961, and existing on that date shall be continued under the instruments creating them unless inconsistent with the provisions of this part.

History: En. Sec. 601, Ch. 286, L. 1959; R.C.M. 1947, 40-5203.

33-2-204. Purpose and duration. The deposit required by 33-2-202 shall be for the benefit, security, and protection of the policyholders or policyholders and creditors of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

History: En. Sec. 602, Ch. 286, L. 1959; R.C.M. 1947, 40-5204.

Cross-References

Purposes of deposits, 33-2-602.

33-2-205. Trust agreement — approval. (1) The deposit referred to in 33-2-202 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and shall be authenticated in such form and manner as the commissioner may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement found by him not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or policyholders and creditors in the United States.

History: En. Sec. 603, Ch. 286, L. 1959; R.C.M. 1947, 40-5205.

Cross-References

Trust code, Title 72, ch. 33 through 36.

33-2-206. Authority to execute trust agreement. An alien insurer using or proposing to use Montana as a state of entry to transact insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this part.

History: En. Sec. 604, Ch. 286, L. 1959; R.C.M. 1947, 40-5206.

33-2-207. Amendment of trust agreement. A trust agreement may be amended, but the amendment shall not be effective until filed with and approved in writing by the commissioner as being in compliance with this part.

History: En. Sec. 605, Ch. 286, L. 1959; R.C.M. 1947, 40-5207.

33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment thereof may be withdrawn by the commissioner if he finds upon hearing, after notice thereof to the insurer and the trustee or trustees, that the requisites for such approval, as provided in this part, no longer exist.

History: En. Sec. 606, Ch. 286, L. 1959; R.C.M. 1947, 40-5208.

Cross-References

Hearing and notice requirements, Title 33, ch. 1, part 7.

33-2-209. Title to trusteed assets. Title to the trusteed assets is vested in the trustee or trustees and their successors for the purposes of the trust deposit, and the trust agreement shall so provide.

History: En. Sec. 607, Ch. 286, L. 1959; R.C.M. 1947, 40-5209.

33-2-210. Assets kept separate. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record thereof sufficient to identify trusteed assets at all times.

History: En. Sec. 608, Ch. 286, L. 1959; R.C.M. 1947, 40-5210.

33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee fails to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

History: En. Sec. 609, Ch. 286, L. 1959; R.C.M. 1947, 40-5211.

Cross-References

Trust administration, Title 72, ch. 34.

33-2-212. Examination of assets. The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures as govern the examination of insurers in general under chapter 1 of this title.

History: En. Sec. 610, Ch. 286, L. 1959; R.C.M. 1947, 40-5212.

Cross-References

Revocation of certificate of authority, 33-2-118, 33-2-119.

33-2-213. Withdrawal of assets. (1) The trust agreement shall provide, in substance, that no withdrawals of trusteed assets shall be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance thereof, except as follows:

(a) any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) for substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part 8 of this chapter, if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body and a copy of such authority has been filed with the trustee;

(c) for the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under 33-2-111(1)(c)(i) and (ii). The trustee shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depositary required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) for the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under 33-2-202 or as may otherwise be consistent with the provisions of this part.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less in amount than as required under 33-2-111(1)(c), upon determination thereof the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under (a), (b), and (c) of subsection (1) above, and the trustee shall comply with such order and until the further order of the commissioner.

History: En. Sec. 611, Ch. 286, L. 1959; R.C.M. 1947, 40-5213.

Cross-References

Trust administration, Title 72, ch. 34.

33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution shall be subject to the commissioner's approval.

(2) If the trustees of any trusteed assets heretofore created are individuals and if the number of such trustees is reduced to less than three by death, resignation, or otherwise, the commissioner shall require that there be substituted for such trustees a bank or trust company in this state approved by him.

History: En. Sec. 612, Ch. 286, L. 1959; R.C.M. 1947, 40-5214.

33-2-215. Canadian insurers. The provisions of this part applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of such a Canadian insurer.

History: En. Sec. 613, Ch. 286, L. 1959; R.C.M. 1947, 40-5215.

Part 3

Authorization of Surplus Line Insurers, Insurance Producers, and Insurance

33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) This part must be applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

(c) "Export" means to place surplus lines insurance with an unauthorized insurer.

(d) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer.

(e) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

(f) "Surplus lines insurance" means any insurance (on risks resident, located, or to be performed in this state) permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term does not include the kinds of insurance exempted under 33-2-317.

(g) "Surplus lines insurance producer" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance (on risks resident, located, or to be performed in this state) with unauthorized insurers eligible to accept such insurance.

(h) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

History: En. Sec. 184, Ch. 286, L. 1959; R.C.M. 1947, 40-3409; amd. Sec. 1, Ch. 537, L. 1987; (3) En. Sec. 2, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989.

33-2-302. Conditions precedent to sale of surplus lines insurance. Insurance may be procured through a licensed surplus lines insurance producer from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers;

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(4) the insurance is not procured for the purpose of securing:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) an advantage in terms of the insurance contract; and

(5) all other requirements of this part are met.

History: En. Secs. 185, 186, Ch. 286, L. 1959; R.C.M. 1947, 40-3410, 40-3411; amd. Sec. 1, Ch. 112, L. 1979; amd. Sec. 3, Ch. 537, L. 1987; amd. Sec. 1, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 3, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 substituted present (2) regarding failure to obtain insurance for former language that read: "the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the insurance producer makes a diligent search among the insurers who are authorized to transact and are actually transacting the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer"; inserted (3) requiring a diligent effort to place the business with a minimum of insurers; and made minor changes in style.

Cross-References

Public inspection of official documents, Art. II, sec. 9, Mont. Const.; 2-6-102, 2-6-104.

33-2-303. Filing and endorsement of contract. Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part must be filed with the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines producer shall properly fill in and sign the endorsement.

History: En. Sec. 187, Ch. 286, L. 1959; R.C.M. 1947, 40-3412; amd. Sec. 4, Ch. 537, L. 1987; amd. Sec. 2, Ch. 285, L. 1989; amd. Sec. 9, Ch. 713, L. 1989.

Cross-References

Minimum policy language simplification standards, 33-15-325.

33-2-304. Surplus lines insurance valid. Insurance contracts procured as surplus lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 188, Ch. 286, L. 1959; R.C.M. 1947, 40-3413; amd. Sec. 5, Ch. 537, L. 1987.

Cross-References

Exception to certificate of authority requirement, 33-2-102.

33-2-305. Licensing of surplus lines insurance producer — fee and bond. (1) A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

History: **En. Sec. 189, Ch. 286, L. 1959; R.C.M. 1947, 40-3414; amd. Sec. 6, Ch. 537, L. 1987; amd. Sec. 3, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 1, Ch. 180, L. 1991; amd. Sec. 4, Ch. 451, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 451 in (1), (2), and (2)(c), after "casualty", deleted "and surety"; and made minor changes in style.

Cross-References

Licensure of insurance producers, Title 33, ch. 17, part 2.

33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or

corporation that has not been appointed as an insurance producer in this state and may compensate him therefor.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered.

History: En. Sec. 190, Ch. 286, L. 1959; R.C.M. 1947, 40-3415; amd. Sec. 7, Ch. 537, L. 1987; amd. Sec. 4, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 2, Ch. 180, L. 1991.

33-2-307. Requirements for eligible surplus lines insurers. (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) $3 million. An insurer possessing less than $4 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders.

History: **En. Sec. 191, Ch. 286, L. 1959; R.C.M. 1947, 40-3416; amd. Sec. 6, Ch. 303, L. 1981; amd. Sec. 8, Ch. 537, L. 1987; (4) En. Sec. 9, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 5, Ch. 451, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 451 in first sentence of (1)(b)(i)(B) substituted "$3 million" for "$2.5 million on April 17, 1988, and $3.5 million on April 17, 1990. After April 17, 1990" and in second sentence, after "$4 million", substituted "capital" for "subcapital"; and made minor changes in style.

33-2-308. Evidence of insurance — changes — penalty. (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request therefor by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted.

History: En. Sec. 192, Ch. 286, L. 1959; R.C.M. 1947, 40-3417; amd. Sec. 11, Ch. 537, L. 1987; amd. Sec. 5, Ch. 285, L. 1989; amd. Sec. 10, Ch. 713, L. 1989.

33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured as to losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section.

History: En. Sec. 193, Ch. 286, L. 1959; R.C.M. 1947, 40-3418; amd. Sec. 12, Ch. 537, L. 1987; amd. Sec. 6, Ch. 285, L. 1989; amd. Sec. 11, Ch. 713, L. 1989.

33-2-310. Records and annual statement — affidavit. (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by him. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year, showing:

(a) name and address of each insured for whom surplus lines insurance was procured;

(b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken;

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing insurance producer; and

(h) such additional information as the commissioner may reasonably require.

(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that he has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

History: En. Sec. 194, Ch. 286, L. 1959; R.C.M. 1947, 40-3419; amd. Sec. 13, Ch. 537, L. 1987; amd. Sec. 7, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.

Cross-References

Reports, fees, and taxes, Title 33, ch. 2, part 7.

33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by him during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: En. Sec. 195, Ch. 286, L. 1959; R.C.M. 1947, 40-3420; amd. Sec. 2, Ch. 664, L. 1979; amd. Sec. 14, Ch. 537, L. 1987; amd. Sec. 2, Ch. 622, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

Cross-References

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid.

History: En. Sec. 196, Ch. 286, L. 1959; R.C.M. 1947, 40-3421; amd. Sec. 15, Ch. 537, L. 1987; amd. Sec. 20, Ch. 557, L. 1987; amd. Sec. 8, Ch. 285, L. 1989; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 6, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of (2), after "in 33-2-321", deleted "before it is due"; and made minor changes in style.

Cross-References

Duties of Attorney General, 2-15-501.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

33-2-313. Revocation or suspension of producer license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with any license as an insurance producer:

(a) if the insurance producer fails to file an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed.

History: En. Sec. 197, Ch. 286, L. 1959; R.C.M. 1947, 40-3422; amd. Sec. 16, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 7, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 deleted former (1)(d) and (1)(e) that read: "(d) if the insurance producer removes the resident surplus lines insurance producer office from this state;

(e) if the insurance producer removes the resident surplus lines insurance producer office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1)"; in (1)(d), before "surplus lines", deleted "resident"; and made minor changes in style.

Cross-References

Records required, 33-2-310.

Tax to be remitted, 33-2-311.

Insurance producer's license — grounds for revocation, 33-17-1001.

33-2-314. Actions against insurer — venue. Every unauthorized insurer issuing a surplus lines insurance policy under this part is considered to be doing business in this state as an unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit must be brought in the district court of the county wherein the plaintiff resides.

History: En. Sec. 198, Ch. 286, L. 1959; R.C.M. 1947, 40-3423; amd. Sec. 17, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

Unauthorized Insurers Process Act, 33-1-611 through 33-1-616.

33-2-315. Commissioner appointed process agent — service of process. (1) Every surplus lines insurer before transacting surplus lines insurance under this part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603.

History: En. Sec. 199, Ch. 286, L. 1959; R.C.M. 1947, 40-3424; amd. Sec. 18, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-2-316. Rules. (1) The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(a) effectuation of The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law.

(2) The rules adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313.

History: En. Sec. 200, Ch. 286, L. 1959; R.C.M. 1947, 40-3425; amd. Sec. 20, Ch. 537, L. 1987; amd. Sec. 9, Ch. 285, L. 1989; amd. Sec. 12, Ch. 713, L. 1989.

Cross-References

Montana Administrative Procedure Act — promulgation of rules, Title 2, ch. 4.

Promulgation of rules by Commissioner, 33-1-313.

33-2-317. Exemptions. The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

History: En. Sec. 201, Ch. 286, L. 1959; R.C.M. 1947, 40-3426; amd. Sec. 21, Ch. 537, L. 1987; amd. Sec. 10, Ch. 285, L. 1989; amd. Sec. 13, Ch. 713, L. 1989.

33-2-318 through 33-2-320 reserved.

33-2-321. Surplus lines advisory organizations — examination by commissioner — stamping fee. (1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) The surplus lines advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.

(5) The surplus lines advisory organization may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses.

History: En. Sec. 10, Ch. 537, L. 1987; amd. Sec. 11, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.

33-2-322 through 33-2-325 reserved.

33-2-326. Penalties. A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

History: **En. Sec. 19, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.**

Part 4 reserved

Part 5
Assets and Liabilities — Reserves

33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there must be allowed as assets only assets that are owned by the insurer and that consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless the amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest on the loan;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if the interest is in the judgment of the commissioner a collectible asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes on the property over the unpaid principal. Interest accrued for a period in excess of 18 months may not be allowed as an asset.

(f) rent due or accrued on real property if the rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of the rent is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable on the premiums. The limitation in this subsection does not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried on the policies;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under chapter 2, part 12;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent considered by the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;

(11) electronic data processing equipment if the cost of the equipment is at least $100,000, which cost must be amortized in full over a period of not to exceed 10 calendar years. However, with regard to life insurers, the equipment must be allowed as an asset if the cost of the equipment is at least $25,000, which cost must be amortized in full over a period of not to exceed 5 calendar years, and the amount of the asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon in the annual statement;

(13) other assets, not inconsistent with the provisions of this section, considered by the commissioner to be available for the payment of losses and claims, at values to be determined by the commissioner.

History: En. Sec. 82, Ch. 286, L. 1959; R.C.M. 1947, 40-3001; amd. Sec. 1, Ch. 570, L. 1979; amd. Sec. 40, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 at end of (8) substituted "chapter 2, part 12" for "33-2-1205"; and made minor changes in style.

Cross-References

Net premium tax — admitted assets, 33-2-705.

Investments allowed of domestic insurers, Title 33, ch. 2, part 8.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers (other than policy loans), whether secured or not, and advances to employees, insurance producers, and other persons on personal security only;

(3) stock of such insurer, owned by it, or any equity therein or loans secured thereby or any proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures (other than electronic data processing machines authorized under 33-2-501(11)), furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, such materials and plants as the insurer is expressly authorized to invest in under 33-2-851; and

(b) in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to part 8 of this chapter or which is acquired through foreclosure of chattel mortgages acquired pursuant to 33-2-831 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

History: En. Sec. 84, Ch. 286, L. 1959; R.C.M. 1947, 40-3003; amd. Sec. 1, Ch. 713, L. 1989.

33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

History: En. Sec. 83, Ch. 286, L. 1959; R.C.M. 1947, 40-3002.

33-2-504 through 33-2-510 reserved.

33-2-511. Liabilities chargeable against assets. In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) the amount of its capital stock outstanding, if any;

(2) the amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof;

(3) with reference to life and disability insurance and annuity contracts:

(a) the amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto;

(b) reserves for disability benefits, for both active and disabled lives;

(c) reserves for accidental death benefits;

(d) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the national association of insurance commissioners, on account of such insurance;

(4) with reference to insurance other than specified in subsection (3) of this section and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part;

(5) taxes, expenses, and other obligations due or accrued at the date of the statement.

History: En. Sec. 85, Ch. 286, L. 1959; R.C.M. 1947, 40-3004.

33-2-512. Unearned premium reserve for property, casualty, and surety. (1) As to insurance against loss or damage to property, except as provided in 33-2-513, and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less	1/2
2 years	1st year 3/4 2nd year 1/4
3 years	1st year 5/6 2nd year 1/2 3rd year 1/6
4 years	1st year 7/8 2nd year 5/8 3rd year 3/8 4th year 1/8
5 years	1st year 9/10 2nd year 7/10 3rd year 1/2 4th year 3/10 5th year 1/10
Over 5 years	pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the commissioner.

(5) This section does not apply to title insurance.

History: En. Sec. 86, Ch. 286, L. 1959; R.C.M. 1947, 40-3005.

Cross-References

Title insurance reserves, 33-2-517.

33-2-513. Unearned premium reserve for marine and transportation insurance. As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve equal to

100% of premiums on trip risks written during the month ended as of the date of statement.

History: En. Sec. 87, Ch. 286, L. 1959; R.C.M. 1947, 40-3006.

33-2-514. Reserve for disability insurance. For all disability insurance policies, the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

History: En. Sec. 88, Ch. 286, L. 1959; R.C.M. 1947, 40-3007.

33-2-515. Loss reserves for liability insurance and workers' compensation. Where required in the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable shall be computed as follows:

(1) For all liability suits being defended under policies written more than:

(a) 10 years prior to the date as of which the statement is made, $1,500 for each suit;

(b) 5 or more and less than 10 years prior to the date as of which the statement is made, $1,000 for each suit;

(c) 3 or more and less than 5 years prior to the date as of which the statement is made, $850 for each suit.

(2) For all liability policies written during the 3 years immediately preceding the date as of which the statement is made, the reserve shall be 60% of the earned liability premiums of each of such 3 years less all losses and expense payments made under liability policies written in the corresponding years. In any event, such reserve shall for the first of such 3 years be not less than $750 for each outstanding liability suit on such year's policies.

(3) For all workers' compensation claims under policies written more than 3 years prior to the date as of which the statement is made, the reserve shall be the present value at 4% interest of the determined and the estimated future payments.

(4) For all workers' compensation claims under policies written in the 3 years immediately preceding the date as of which the statement is made, such reserve shall be 65% of the earned compensation premiums of each of such 3 years less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such 3-year period, such reserve shall be not less than the present value at 4% interest of the determined and the estimated unpaid compensation claims under policies written during such year.

History: En. Sec. 89, Ch. 286, L. 1959; R.C.M. 1947, 40-3008.

Cross-References

Workers' compensation, Title 39, ch. 71.

33-2-516. Inadequate reserves — increase required. If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

History: En. Sec. 90, Ch. 286, L. 1959; R.C.M. 1947, 40-3009.

33-2-517. Title insurance reserves. (1) In addition to an adequate reserve as to outstanding losses as required under 33-2-511, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract shall be reduced by 5% of the original amount of such reserve.

(2) The sums herein required to be reserved for unearned premiums on contracts of title insurance shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) of this section shall be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) of this section. In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976.

History: En. Sec. 91, Ch. 286, L. 1959; amd. Sec. 1, Ch. 96, L. 1977; R.C.M. 1947, 40-3010.

Cross-References

Special investments — treatment, 33-2-851.

Title insurance — general provisions, Title 33, ch. 25.

33-2-518 through 33-2-520 reserved.

33-2-521. Standard valuation of reserve liabilities law — life insurance. (1) The commissioner shall annually value or cause to be valued the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States.

(2) For the purpose of making such valuation, the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be

made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum herein provided.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(1).

33-2-522. Contracts prior to the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued prior to the operative date of 33-20-213.

(2) Except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at 3 1/2% per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at 3 1/2% per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from the date of the policy or under an endowment preliminary term policy exceeds that charged for life insurance under 20-payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

(3) Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(2).

33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524 and 33-2-525, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in 33-2-525 and 32-2-526(3), 5% interest for group annuity and pure endowment contracts, and 3 ½% interest for all other such policies and contracts or, in the case of policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for such policies issued prior to July 1, 1979, and 4 ½% interest for such policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioner's 1941 standard ordinary mortality table:

(i) for such policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after that operative date but prior to January 1, 1989, except that for any category of such policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for such policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of 33-20-207, as amended, and for such policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, such tables as may be approved by the commissioner.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 1, Ch. 346, L. 1979; amd. Sec. 1, Ch. 520, L. 1983.

33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) Except as provided in 33-2-527, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date under group annuity and pure endowment contracts is the commissioner's reserve valuation methods defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single-premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual single-premium immediate annuity contracts issued on or after July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 7 ½% interest;

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1979, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 5 ½% interest for single-premium deferred annuity and pure endowment contracts and 4 ½% interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(e) for all annuities and pure endowments purchased on or after July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any group annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such annuities and pure endowments or any modification of such tables approved by the commissioner and 7 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection (1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 9, Ch. 198, L. 1979; amd. Sec. 2, Ch. 346, L. 1979; amd. Sec. 2, Ch. 520, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-2-525. Commissioner's reserve valuation method. (1) Except as otherwise provided in subsection (4) and 33-2-526(3), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy;

(b) a net 1-year term premium for such benefits provided for in the first policy year.

(2) (a) For every life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of such policy anniversary calculated as described in subsection (1) or the reserve as of such policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of such excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on such assumed ending date as an endowment; and

(iv) the cash surrender value provided on such assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and 33-2-527 must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of such contract that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 3, Ch. 346, L. 1979; amd. Sec. 6, Ch. 520, L. 1983.

33-2-526. Limits — options — minimum reserves. (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525 and subsection (3) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) Reserves for any category of policies, contracts, or benefits as established by the commissioner may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for such policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of such a policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 4, Ch. 346, L. 1979; amd. Sec. 7, Ch. 520, L. 1983.

33-2-527. Interest rates — determination of minimum standard valuation. (1) The calendar year statutory valuation interest rates as established in this section must be used in determining the minimum standard for the valuation of:

(a) all life insurance policies issued in a particular calendar year on or after January 1, 1989;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

(2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are determined as follows and the results rounded to the nearer 1/4 of 1%, when R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate established in 33-2-529, and W is the weighting factor established in 33-2-528:

(a) for life insurance:

Interest rate = $.03 + W(R_1 - .03) + (W/2)(R_2 - .09)$;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Interest rate = $.03 + W(R - .03)$;

(c) for other annuities with:

(i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

(iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

(3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2 of 1%, the calendar year statutory valuation interest rate for such life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined for each subsequent calendar year regardless of when 33-20-208 becomes operative.

History: En. Sec. 3, Ch. 520, L. 1983.

33-2-528. Interest rate weighting factor. (1) The weighting factors referred to in the formulas stated in 33-2-527 are as follows:

(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in subsection (2) and the type of plan established in subsection (3):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

	Plan Type		
	A	B	C
(ii) for annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subsection (1)(c)(i) increased by:	.15	.25	.05

	Plan Type		
	A	B	C
(iii) for annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) that do not guarantee interest on considerations received more than 1 year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors set forth in subsection (1)(c)(i) or derived in subsection (1)(c)(ii) increased by:	.05	.05	.05

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no

cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(3) Plan types used in subsection (1)(c) are:

(a) Plan Type A—No withdrawal is permitted or at any time policyholder may withdraw funds only:

(i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(ii) without such adjustment but in installments over 5 years or more; or

(iii) as an immediate life annuity.

(b) Plan Type B—(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or a policyholder may withdraw funds only:

(A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(B) without such adjustment but in installments over 5 years or more.

(ii) At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than 5 years.

(c) Plan Type C—A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than 5 years either:

(i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(b) As used in subsection (4):

(i) issue year basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

(ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

History: **En. Sec. 4, Ch. 520, L. 1983.**

33-2-529. Reference interest rate. (1) The reference interest rate referred to in the formulas in 33-2-527 is:

(a) for all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(e) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates; or

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates.

(2) If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's investors service, inc., or if the national association of insurance commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the national association of insurance commissioners and approved by the commissioner may be substituted.

History: En. Sec. 5, Ch. 520, L. 1983.

33-2-530 reserved.

33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase

of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired and valued in accordance with parts 5 and 8 of this chapter.

(5) Real estate mortgage loans, chattel mortgage loans, and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. If the insurer uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a security interest in such real estate, in a form acceptable to the commissioner, shall be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and such default continues for a period of 120 days, the commissioner may declare such security no longer eligible for deposit under this section.

History: En. Sec. 93, Ch. 286, L. 1959; R.C.M. 1947, 40-3012; amd. Sec. 2, Ch. 570, L. 1979; amd. Sec. 1, Ch. 427, L. 1981.

Cross-References

Deposit requirement, 33-2-111.

Deposits — general provisions, Title 33, ch. 2, part 6.

Duration and release of deposit, 33-2-612.

Diversification of investments, 33-2-806.

Mortgages of real property, Title 71, ch. 1, part 2.

Deeds of trust, Title 71, ch. 1, part 3.

33-2-532. Valuation of bonds. (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted to bring the value to par at maturity and to yield in the meantime the effective rate of interest at which the purchase was made or, in lieu of this method, according to an accepted method of valuation as is approved by the commissioner by rule.

(b) Purchase price may not be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of the securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, a security may not be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section.

History: En. Sec. 94, Ch. 286, L. 1959; R.C.M. 1947, 40-3013; amd. Sec. 41, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 at end of (1)(a)(ii) inserted "by rule"; and made minor changes in style.

33-2-533. Valuation of other securities. (1) Securities, other than those referred to in 33-2-532, held by an insurer must be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by the commissioner as representing their fair market value as established by rule.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with the method of computation that the commissioner may approve.

History: En. Sec. 95, Ch. 286, L. 1959; R.C.M. 1947, 40-3014; amd. Sec. 42, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 at end of (1) inserted "as established by rule"; and made minor changes in style.

33-2-534. Valuation of property. (1) Real property acquired pursuant to a mortgage loan or contract for sale shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, the cost of improvements thereafter made by the insurer, and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property. After the initial valuation as set forth herein, any land shall be valued at its acquisition cost and any improvements thereon shall be valued at depreciated acquisition cost.

(2) Other real property held by an insurer shall not be valued at an amount in excess of acquisition cost if land and depreciated acquisition cost if an improvement to land.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with 33-2-831 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

History: En. Sec. 96, Ch. 286, L. 1959; R.C.M. 1947, 40-3015; amd. Sec. 2, Ch. 534, L. 1987.

33-2-535. Valuation of purchase money mortgages. Purchase money mortgages on real property referred to in 33-2-534(1) shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

History: En. Sec. 97, Ch. 286, L. 1959; R.C.M. 1947, 40-3016.

33-2-536. Undeterminable reserves — rules by commissioner. If a plan of life insurance provides for future premium determination the amounts of which are to be determined by the insurance company based on current estimates of future experience or if a plan of life insurance or annuity is of such a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526, the reserves that are held under any such plan must, as determined by regulations promulgated by the commissioner:

(1) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) be computed by a method which is consistent with the principles of 33-2-521 through 33-2-526 and 33-2-531 through 33-2-535 and 33-2-527 through 33-2-529.

History: En. Sec. 8, Ch. 520, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6
Deposits

33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner shall be accepted and held and shall be subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country;

(3) deposits of reserves made by domestic life insurers under 33-2-531;

(4) deposits in such additional amounts as are permitted to be made under 33-2-609.

History: En. Sec. 132, Ch. 286, L. 1959; R.C.M. 1947, 40-3201.

Cross-References

Deposit requirement — general provision, 33-2-111.

33-2-602. Purpose of deposit. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under 33-2-111 shall be held for the purpose stated in such section.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of such other state, province, or country shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

(3) Deposits of reserves made by domestic life insurers under 33-2-531 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts.

(4) Deposits required pursuant to the retaliatory law, 33-2-709, shall be held for such purposes as is required by such law and as specified by the commissioner's order requiring such deposit to be made.

History: En. Sec. 133, Ch. 286, L. 1959; R.C.M. 1947, 40-3202.

Cross-References

Alien insurers — deposit of trusteed assets, 33-2-202.

33-2-603. Securities eligible for deposit. (1) All such deposits required under 33-2-111 for authority to transact insurance in this state shall consist of certificates of deposit or any combination of securities of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country shall be comprised of assets of the kinds described in subsection (1) above and of such additional kind or kinds of securities required or permitted by the laws of such state, province, or country except common stocks, mortgages of any kind, and real estate.

(3) Deposits of the reserves of a domestic life insurer shall consist of securities and assets as provided under 33-2-531.

(4) Deposits of foreign insurers made in this state under the retaliatory law, 33-2-709, shall consist of such assets as are required by the commissioner pursuant to such law.

History: En. Sec. 134, Ch. 286, L. 1959; R.C.M. 1947, 40-3203.

33-2-604. Depositary or custodian. (1) Deposits made in this state under this code shall be made through the office of the commissioner in safe deposit or under custodial arrangements as required or approved by the commissioner consistent with the purposes of such deposit, with an established safe deposit institution, bank, or trust company located in the city of Helena, state of Montana, selected by the insurer with the commissioner's approval.

(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing thereon, the insurer may, with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state, so long as receipts representing all such securities are issued by such custodian bank or trust company and are held in safe deposit or custody subject to the requirements of subsections (1) and (2) of this section.

(4) The form and terms of all such depositary or custodial agreements shall be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

(5) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

History: En. Sec. 135, Ch. 286, L. 1959; R.C.M. 1947, 40-3204.

Cross-References

Commercial bank defined, 32-1-105.
Savings bank defined, 32-1-106.
Trust company defined, 32-1-107.
Investment company defined, 32-1-108.

33-2-605. Record of deposits — liability of commissioner and state. (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

(3) The commissioner and the state of Montana shall have no liability as to the safekeeping of any such deposit by the depositary or custodian thereof.

History: (1), (2)En. Sec. 136, Ch. 286, L. 1959; Sec. 40-3205, R.C.M. 1947; (3)En. Sec. 137, Ch. 286, L. 1959; Sec. 40-3206, R.C.M. 1947; R.C.M. 1947, 40-3205, 40-3206.

33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code shall be duly assigned to the commissioner and his successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for such securities shall be so delivered, if negotiable, or assigned to the commissioner if thereby legal title to such securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and his successors in office all other assets so deposited. Upon release to the insurer of any such asset or security, the commissioner shall reassign or transfer or reconvey the same to the insurer.

History: En. Sec. 138, Ch. 286, L. 1959; R.C.M. 1947, 40-3207.

Cross-References

Security in real property — domestic life insurers — transferability requirements, 33-2-531.

33-2-607. Appraisal. The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

History: En. Sec. 139, Ch. 286, L. 1959; R.C.M. 1947, 40-3208.

Cross-References

Domestic life insurers — reserves valuation, 33-2-532 through 33-2-535.

33-2-608. Rights of insurer during solvency. So long as the insurer remains solvent and is in compliance with this code it may:

(1) demand, receive, sue for, and recover the income from the assets or securities deposited;

(2) exchange and substitute for the deposited assets or securities, or any part thereof, other eligible assets or securities of equivalent or greater value; and

(3) at any reasonable time inspect any such deposit.

History: En. Sec. 140, Ch. 286, L. 1959; R.C.M. 1947, 40-3209.

Cross-References

Insolvency — supervision by Commissioner, 33-2-1321.

33-2-609. Excess deposits. An insurer may so deposit and have on deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 20% of such required or permitted deposit or $50,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of assets and securities deposited and to facilitate the exchange and substitution of such assets and securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in 33-2-612(4).

History: En. Sec. 141, Ch. 286, L. 1959; R.C.M. 1947, 40-3210.

33-2-610. Levy upon deposit. No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits pursuant to the retaliatory law, 33-2-709, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is made.

History: En. Sec. 142, Ch. 286, L. 1959; R.C.M. 1947, 40-3211.

33-2-611. Deficiency of deposit — revocation of certificate. If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604(3) falls below the amount required under this code to be so held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in amount sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered or certified mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

History: En. Sec. 143, Ch. 286, L. 1959; R.C.M. 1947, 40-3212.

Cross-References

Revocation of certificate of authority, 33-2-118.

33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit required under the retaliatory law, 33-2-709, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon:

(a) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred, and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law, and, unless the insurer is required so to deposit and maintain on deposit all of its reserves, that such deposit of such reserves will be so deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts so reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by such insurer when such insurer has ceased transacting insurance in this state or in the United States and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

History: En. Sec. 144, Ch. 286, L. 1959; R.C.M. 1947, 40-3213; amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.; 2-9-102.

Immunization and indemnification of public officers, 2-9-305.

Part 7

Reports, Fees, and Taxes

Part Cross-References

Report of surplus line insurance producer, 33-2-310.

33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement must be in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves. The statement must be verified by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

(3) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or within an extension of time that the commissioner may grant.

(4) Any director, officer or insurance producer, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more than $1,000.

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(6) The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of $1,000.

History: En. Sec. 65, Ch. 286, L. 1959; amd. Sec. 1, Ch. 27, L. 1967; R.C.M. 1947, 40-2820; amd. Sec. 3, Ch. 534, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 43, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted third and fourth sentences of (1) regarding the required form of the statement; at end of (3) inserted "or within an extension of time that the commissioner may grant"; and made minor changes in style.

Cross-References

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

Benevolent associations — additional requirements, 33-6-304.

False swearing, 45-7-202.

33-2-702 through 33-2-704 reserved.

33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the interest rate established in 31-1-107.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(part); amd. Sec. 1, Ch. 664, L. 1979; amd. Sec. 7, Ch. 303, L. 1981; amd. Sec. 12, Ch. 467, L. 1981; amd. Sec. 1, Ch. 295, L. 1983; amd. Sec. 3, Ch. 518, L. 1983; amd. Sec. 3, Ch. 622, L. 1987; amd. Sec. 2, Ch. 798, L. 1991; amd. Sec. 30, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in (6), after "$100", substituted "plus interest on the delinquent amount at the interest rate established in 31-1-107" for "a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater"; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Not subject to corporate license tax, 15-31-101.

General fund — deposits by Insurance Commissioner, 17-2-121.

Allocation of certain casualty insurance tax — firefighters' pension and compensation, 19-13-604, 19-17-301, 19-18-512.

Fire departments — reports to Commissioner, 19-18-511.

Allocation of certain casualty insurance tax — Municipal Police Officers' Retirement System, 19-19-305.

Revocation of certificate of authority, 33-2-118, 33-2-119.

Tax on surplus lines, 33-2-311.

Not applicable to health service corporations, 33-30-203.

Tax on fire insurance premiums — state fire prevention and investigation program, 50-3-109.

33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured through a surplus lines insurance producer pursuant to The Surplus Lines Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 3/4% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectible from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or disability insurances.

History: En. Sec. 202, Ch. 286, L. 1959; amd. Sec. 1, Ch. 147, L. 1977; R.C.M. 1947, 40-3427; amd. Sec. 26, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

Cross-References

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-707. Preemption of taxing. The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general insurance producers and insurance producers as such and on the intangible property of insurers or such insurance producers. No county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general insurance producers and insurance producers as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(6); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

No payment of corporate tax, 15-31-101.

33-2-708. Fees and licenses. (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers	$ 600.00
(B) foreign insurers	600.00
(ii) annual continuation of certificate of authority	600.00
(iii) reinstatement of certificate of authority	25.00
(iv) amendment of certificate of authority	50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state	20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation	25.00
(c) filing bylaws or amendment to bylaws where required	10.00
(d) filing annual statement of insurer, other than as part of application for original certificate of authority	25.00
(e) insurance producer's license:	
(i) application for original license, including issuance of license, if issued	15.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) temporary license	15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(f) nonresident insurance producer's license:	
(i) application for original license, including issuance of license, if issued	100.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) annual renewal of license	10.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(g) examination, if administered by the commissioner, for license as insurance producer, each examination	15.00
(h) surplus lines insurance producer license:	
(i) application for original license and for issuance of license, if issued	50.00
(ii) annual renewal of license	50.00
(i) adjuster's license:	
(i) application for original license and for issuance of license, if issued	15.00
(ii) annual renewal of license	15.00
(j) insurance vending machine license, each machine, each year	10.00
(k) commissioner's certificate under seal (except when on certificates of authority or licenses)	10.00
(l) copies of documents on file in the commissioner's office, per page	.50
(m) policy forms:	
(i) filing each policy form	25.00
(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks	10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days	100.00
(n) applications for approval of prelicensing education courses:	
(i) reviewing initial application	150.00
(ii) periodic review	50.00

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4) (a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

(b) The accreditation fee required by subsection (3) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. 1975; amd. Sec. 1, Ch. 322, L. 1977; R.C.M. 1947, 40-2726(1), (2); amd. Sec. 10, Ch. 198, L. 1979; amd. Sec. 1, Ch. 344, L. 1979; amd. Sec. 8, Ch. 303, L. 1981; amd. Sec. 1, Ch. 391, L. 1985; amd. Sec. 15, Ch. 249, L. 1987; amd. Sec. 1, Ch. 469, L. 1987; amd. Sec. 27, Ch. 537, L. 1987; amd. Sec. 6, Ch. 351, L. 1989; amd. Sec. 5, Ch. 509, L. 1989; amd. Sec. 14, Ch. 713, L. 1989; amd. Sec. 3, Ch. 798, L. 1991; amd. Sec. 9, Ch. 451, L. 1993; amd. Sec. 44, Ch. 596, L. 1993; amd. Sec. 7, Ch. 622, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 451 in (1)(m)(ii), after "application", inserted "certificate, enrollment form"; and made minor changes in style.

Chapter 596 inserted (3) establishing an annual accreditation fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) providing for deposit and expenditure of the accreditation fee; and made minor changes in style.

Chapter 622 inserted (2) requiring Commissioner of Insurance to adopt fees implementing 33-17-1204 and 33-17-1205; in (4)(a), at end, inserted exception clause requiring fees implementing 33-17-1204 and 33-17-1205 to be deposited as required by 33-17-1207; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 596 and Ch. 622 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

Cross-References

Fund structure, Title 17, ch. 2.

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-709. Retaliatory fees, taxes, and other obligations. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the insurance producers or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers or upon the insurance producers or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the insurance producers or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their insurance producers or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to any fees in conjunction with the licensing of insurance producers, personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed by another state or by an agency of this state other than the department in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

History: En. Sec. 71, Ch. 286, L. 1959; R.C.M. 1947, 40-2826; amd. Sec. 9, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 4, Ch. 798, L. 1991.

Cross-References

Holding of retaliatory deposit, 33-2-602, 33-2-603.

Levy on retaliatory deposit by claimant or judgment debtor, 33-2-610.

Release of retaliatory deposit, 33-2-612.

33-2-710. Premium tax imposed on policy issued through nonresident licensee. Any insurer who issues a policy on a subject or risk located or to be performed in Montana through a nonresident licensee shall pay a premium tax on such policy to the state of Montana, in an amount and in the manner provided in 33-2-705.

History: En. Sec. 4, Ch. 395, L. 1983.

Cross-References

Nonresident licensee to pay taxes — annual report required, 33-17-407.

33-2-711. Terminated. Sec. 6, Ch. 706, L. 1985.

History: En. Sec. 2, Ch. 706, L. 1985.

33-2-712. Genetics program fee. Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay 70 cents to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in the general fund. The purpose of the fee is to fund the voluntary statewide genetics program established in 50-19-211.

History: En. Sec. 1, Ch. 554, L. 1987; amd. Sec. 1, Ch. 155, L. 1989; amd. Sec. 1, Ch. 638, L. 1991.

Compiler's Comments

Amendment of Repeal: Section 1, Ch. 282, L. 1993, amended sec. 3, Ch. 638, L. 1991, by deleting a portion of the repealer provision imposed by that section. Amendment effective April 7, 1993.

33-2-713. Group disability policy exemption. The fee required in 33-2-712 does not apply to blanket group disability insurance as defined in Title 33, chapter 22, part 6, where the total premium charged per person is less than $10 a year. For these policies, the fee is to be assessed on the basis of the number of blanket group policyholders in Montana.

History: En. Sec. 2, Ch. 554, L. 1987.

Compiler's Comments

Amendment of Repeal: Section 1, Ch. 282, L. 1993, amended sec. 3, Ch. 638, L. 1991, by deleting a portion of the repealer provision imposed by that section. Amendment effective April 7, 1993.

33-2-714 through 33-2-720 reserved.

33-2-721. Product liability insurer — report. (1) Each insurance company doing business in this state that insures against product liability losses shall make and file with the department of insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to be prescribed and that may be furnished by the department.

(2) The report shall include the following information:

(a) the amount of product liability insurance premiums collected for the year, indicating the amount of premiums allocable to Montana and the total nationwide amount;

(b) information for product liability insurance experience, separately allocated to Montana and nationwide, showing the:

(i) total amount of earned premiums;

(ii) total amount of incurred losses, including all loss adjustment expense;

(iii) amount of reserves for both reported and unreported incurred losses; and

(iv) amount of other reserves for other product liability losses; and

(c) for any claim, loss, or action for bodily injury, death, or property damage allocated to Montana experience if there has been a final judgment or a settlement in any amount or if there has been a final disposition not resulting in a loss payment on behalf of the insured:

(i) a description of the type of product involved in each claim;

(ii) the date of occurrence from which each claim arose;

(iii) the state or other jurisdiction wherein each claim was adjudicated, settled, or other disposition made;

(iv) the date legal action commenced, if filed;

(v) a brief description of the occurrence out of which the claim arose;

(vi) the total number of all claims;

(vii) the total number of all claims closed without payments; and

(viii) such other information as the department may require.

History: En. Sec. 1, Ch. 615, L. 1979; amd. Sec. 1, Ch. 60, L. 1983.

Cross-References

Urban renewal bonds — equal investment, 7-15-4306.

Housing authority bonds — legal investment, 7-15-4505.

Casualty insurance, 33-1-206; Title 33, ch. 23.

33-2-722. Department to make reports available. The department of insurance shall make the reports required under 33-2-721 available to the public on request at a fee prescribed by the department, not to exceed reasonable costs, and in a manner that does not reveal the names of any manufacturer, distributor, seller, or other person involved.

History: En. Sec. 2, Ch. 615, L. 1979.

33-2-723. Insurer not liable for making report. No liability may arise against any insurer or against its insurance producers or employees as a result of making a report pursuant to 33-2-721.

History: En. Sec. 3, Ch. 615, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-2-724 through 33-2-735 reserved.

33-2-736. Terminated. Section 39(9), Ch. 15, Sp. L. July 1992.

History: En. Sec. 31, Ch. 15, Sp. L. July 1992.

Part 8

Investments

Part Cross-References

Board of Investments — bonds — legal investment, 17-5-1525, 17-5-1628.

33-2-801. Scope of part. Except as to 33-2-852, this part shall apply to domestic insurers only.

History: En. Sec. 98, Ch. 286, L. 1959; R.C.M. 1947, 40-3101.

33-2-802. Eligibility of investments. (1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this part.

(2) Any particular investment held by an insurer on January 1, 1961, which was a legal investment at the time it was made and which the insurer was legally entitled to possess immediately prior to January 1, 1961, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2) above.

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding date of acquisition of the investment by the insurer or as shown by a current financial statement filed with the commissioner.

History: En. Sec. 99, Ch. 286, L. 1959; R.C.M. 1947, 40-3102.

33-2-803. General qualifications of investments. (1) No security or investment, other than real and personal property acquired under 33-2-832, shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of this part shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this part shall be disposed of pursuant to 33-2-842 if personal property or securities or pursuant to 33-2-841 if real property.

History: En. Sec. 100, Ch. 286, L. 1959; R.C.M. 1947, 40-3103.

33-2-804. Prohibited investments and investment underwriting. (1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not invest in or lend its funds upon the security of:

(a) issued shares of its own capital stock, except for the purpose of mutualization under 33-3-215;

(b) except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or after such acquisition by the insurer will be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under 33-2-822 shall not be subject to this provision.

(c) any note or other evidence of indebtedness of any director, officer, or controlling stockholders of the insurer, except as to policy loans authorized under 33-2-825.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

History: En. Sec. 130, Ch. 286, L. 1959; R.C.M. 1947, 40-3133.

Cross-References

Assets not allowed in determining financial condition of insurer, 33-2-502.

33-2-805. Authorization of investment or loan. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee shall be recorded, and regular reports of such committee shall be submitted to the board of directors.

History: En. Sec. 101, Ch. 286, L. 1959; R.C.M. 1947, 40-3104.

33-2-806. Diversification of investments. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer shall not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash and/or the securities or investments provided for under 33-2-531.

(5) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) An insurer may invest and have invested at any one time in aggregate amount not more than 10% of its assets in all stocks under 33-2-820 and 33-2-821. Determination of the amount which an insurer has invested in common stocks for the purposes of this provision shall be based on the cost of such stocks to the insurer. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

(7) Except with the commissioner's consent, an insurer may not have invested at any one time more than 5% of its assets in securities allowed under 33-2-824.

(8) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 10% of its assets in the class of securities described in any one of the following sections: 33-2-814, 33-2-819, and 33-2-823.

(9) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

History: En. Sec. 102, Ch. 286, L. 1959; R.C.M. 1947, 40-3105; amd. Sec. 4, Ch. 534, L. 1987.

Cross-References

Domestic stock insurers — general provisions, Title 33, ch. 3, part 1.

33-2-807 through 33-2-810 reserved.

33-2-811. United States or Canadian government obligations — loans guaranteed. (1) An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America or of Canada or for which the full faith and credit of the United States of America or of Canada is pledged for the payment of principal and interest.

(2) An insurer may invest in loans guaranteed as to principal and interest by the United States of America or Canada or by any agency or instrumentality of the United States of America or Canada.

History: (1)En. Sec. 103, Ch. 286, L. 1959; Sec. 40-3106, R.C.M. 1947; (2)En. Sec. 104, Ch. 286, L. 1959; Sec. 40-3107, R.C.M. 1947; R.C.M. 1947, 40-3106, 40-3107.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-812. State, county, municipal, and school obligations. An insurer may invest any of its funds in bonds or other evidences of indebtedness which are general obligations of or are secured by pledge of specific revenues by this state or of any other state of the United States or province of Canada or of any of the counties or incorporated cities or towns or duly organized school districts or other taxing districts of such states or provinces.

History: En. Sec. 105, Ch. 286, L. 1959; R.C.M. 1947, 40-3108.

Cross-References

Local government — debt management, Title 7, ch. 7.

Public bond issues, Title 17, ch. 5.

School bonds, Title 20, ch. 9, part 4.

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-2-813. Revenue bonds. An insurer may invest in bonds, notes, or evidences of indebtedness of any state of the United States or province of Canada or any political subdivision thereof or any agency or instrumentality of any of the foregoing, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on such obligations and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

History: En. Sec. 106, Ch. 286, L. 1959; R.C.M. 1947, 40-3109.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-814. Improvement district obligations. An insurer may invest in bonds, notes, or evidences of indebtedness issued by any local improvement district in this or any other state to finance local improvements authorized by law if the principal and interest of such obligations is payable from assessments on real property within such local improvement district. No such investment shall be made if the face value of all such obligations, together with all similar obligations of such improvement district outstanding, exceed 50% of the market value of the real property and improvements upon which such bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.

History: En. Sec. 107, Ch. 286, L. 1959; R.C.M. 1947, 40-3110.

Cross-References

Improvement districts, Title 7, ch. 12.

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-815. Irrigation district obligations. An insurer may invest in the bonds, notes, or evidences of indebtedness of any irrigation district organized under the laws of Montana.

History: En. Sec. 108, Ch. 286, L. 1959; R.C.M. 1947, 40-3111.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

Irrigation districts — indebtedness, bonds, and bankruptcy, Title 85, ch. 7, part 20.

33-2-816. Obligations or stock of certain federal agencies. An insurer may invest in the obligations and/or stock, where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government:

(1) commodity credit corporation;

(2) federal intermediate credit banks;

(3) federal land banks;

(4) central bank for cooperatives;

(5) federal home loan banks and stock thereof;

(6) federal national mortgage association and stock thereof when acquired in connection with sale of mortgage loans to such association;

(7) any other similar agency of the government of the United States of America and of similar financial quality.

History: En. Sec. 109, Ch. 286, L. 1959; R.C.M. 1947, 40-3112.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

Reserves — domestic life insurers — valuation of securities, 33-2-533.

Federal Housing Administration and National Mortgage Association — investment in authorized, 33-2-833.

33-2-817. International bank. An insurer may invest in obligations issued, assumed, or guaranteed by the international bank for reconstruction and development or by the African development bank.

History: En. Sec. 110, Ch. 286, L. 1959; R.C.M. 1947, 40-3113; amd. Sec. 1, Ch. 411, L. 1989.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-818. Corporate bonds and debentures. (1) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada or any state or province thereof, which are not in default as to principal or interest and which are secured by adequate collateral and bear fixed interest and if during each of any 3, including either of the last 2, of the 5 fiscal years next preceding the date of acquisition by the insurer the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than 1 ¼ times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of common stock.

(2) An insurer may invest in secured and unsecured obligations of such institutions, other than obligations described in subsection (1), bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by such insurer have averaged per year not less than 1 ½ times its average annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than 1 ½ times its fixed charges for such year.

(3) An insurer may invest in adjustment, income, or other contingent interest obligations of such institutions if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than 1 ½ times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings shall have been not less than 1 ½ times the sum of its fixed charges and maximum contingent interest for such year.

(4) Within the meaning of this section, the term "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal income taxes, depreciation, and depletion but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming, or guaranteeing institutions. The term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

History: En. Sec. 111, Ch. 286, L. 1959; R.C.M. 1947, 40-3114.

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-819. Preferred or guaranteed stock. An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States of America or of Canada or of any state or province thereof if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition of the investment by such insurer are eligible as investments under this part and if the net earnings of such institution available for its fixed charges during each of the last 2 years have been, and during each of the last 5 years have averaged, not less than 1 ½ times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements. For the purposes of this section such computation shall refer to the fiscal years immediately preceding the date of acquisition of the investment by the insurer, and the term "preferred dividend requirement" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

History: En. Sec. 112, Ch. 286, L. 1959; R.C.M. 1947, 40-3115.

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

Business corporations — shares, Title 35, ch. 1, part 6.

33-2-820. Common stocks. An insurer may invest in nonassessable common stocks, other than insurance stocks, of any solvent corporation existing under the laws of the United States of America or of Canada or any state or province thereof if cash or stock dividends have been earned and paid on its common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section shall be based upon consolidation pro forma statements of the predecessor or constituent institutions.

History: En. Sec. 113, Ch. 286, L. 1959; R.C.M. 1947, 40-3116.

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

Business corporations — shares, Title 35, ch. 1, part 6.

33-2-821. Insurance stocks. (1) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of 33-2-819 and 33-2-820.

(2) With the commissioner's consent, an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in 33-2-822.

History: En. Sec. 114, Ch. 286, L. 1959; R.C.M. 1947, 40-3117.

Cross-References

Ownership of own corporate stock, 33-2-502.

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-822. Stocks of subsidiaries. With the commissioner's consent, an insurer may invest in the stock of its subsidiary insurance corporation or in the stock of its subsidiary business corporation formed under the laws of this state and necessary and incidental to the convenient operation of the insurer's insurance business or to the administration of any of its investments. All of the insurer's investments under this section shall not at any time exceed 10% of the investing insurer's assets. For the purposes of this section, a "subsidiary" is a corporation of which the insurer owns a majority of the outstanding shares of all voting stock.

History: En. Sec. 115, Ch. 286, L. 1959; R.C.M. 1947, 40-3118; amd. Sec. 3, Ch. 570, L. 1979.

Cross-References

Ownership of own stock — not asset, 33-2-502.

Reserves — domestic life insurers — valuation of stock, 33-2-533.

33-2-823. Equipment trust certificates. An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment.

History: En. Sec. 116, Ch. 286, L. 1959; R.C.M. 1947, 40-3119.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-824. Investment trust securities. An insurer may invest in the securities of any management type investment company or investment trust registered with the federal securities and exchange commission under the Investment Company Act of 1940, as from time to time amended, if such investment company or trust has assets not less than $50 million as at date of investment by the insurer.

History: En. Sec. 117, Ch. 186, L. 1959; R.C.M. 1947, 40-3120.

Cross-References

Securities regulation, Title 30, ch. 10.

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-825. Policy loans. A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

History: En. Sec. 118, Ch. 286, L. 1959; R.C.M. 1947, 40-3121.

33-2-826. Collateral loans. An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this part. As at date made, no such loan shall exceed in amount 75% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this part to be invested in the respective categories of securities so pledged.

History: En. Sec. 119, Ch. 286, L. 1959; R.C.M. 1947, 40-3122.

33-2-827. Savings and loan. To the extent that an account is insured by the federal deposit insurance corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations.

History: En. Sec. 120, Ch. 286, L. 1959; R.C.M. 1947, 40-3123; amd. Sec. 55, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 substituted reference to Federal Deposit Insurance Corporation for reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

Cross-References

Membership in federal home loan bank, 32-2-308.

33-2-828. Foreign securities. An insurer authorized to transact insurance in a foreign country may make investments, in aggregate amount not exceeding its deposit and obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to like investments required pursuant to this part for investments in the United States of America. Canadian securities eligible for investment under other provisions of this part are not subject to this section.

History: **En. Sec. 121, Ch. 286, L. 1959; R.C.M. 1947, 40-3124.**

Cross-References

Reserves — valuation of securities, 33-2-533.

33-2-829. Miscellaneous investments. (1) An insurer may make loans or investments not otherwise expressly permitted under this part, in aggregate amount not over 5% of the insurer's assets and not over 1% of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of 33-2-803 and otherwise qualifies as a sound investment. But no such loan or investment shall be represented by:

(a) any item described in 33-2-502 or any loan or investment otherwise expressly prohibited;

(b) insurance producers' balances or amounts advanced to or owing by insurance producers or former insurance producers of the insurer, whether or not secured, except as to policy loans, mortgage loans, and collateral loans otherwise authorized under this part;

(c) any category of loans or investments eligible under any other provisions of this part;

(d) any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this part.

(2) The insurer shall keep a separate record of all loans and investments made under this section.

History: **En. Sec. 122, Ch. 286, L. 1959; R.C.M. 1947, 40-3125; amd. Sec. 1, Ch. 713, L. 1989.**

33-2-830. Real estate mortgages. (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real estate" means all farm lands used for tillage, crop, pasture, or timberlands and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(i) 80% of the value of the real property or leasehold securing the same, provided, however, if said real property or leasehold consists of one- or two-family residential property, 90% of said value;

(ii) the amount of any insurance or guaranty of such loan by the United States of America or by any agency or instrumentality thereof; or

(iii) the amounts provided in subsection (i) herein, plus the amount by which the excess of such loan over such amount is insured or guaranteed by the United States of America or by any agency or instrumentality thereof.

(b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(4) No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

(5) No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer or unless the insurer holds a senior participation in such mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding 35 years.

History: En. Sec. 123, Ch. 286, L. 1959; amd. Sec. 1, Ch. 20, L. 1961; R.C.M. 1947, 40-3126; amd. Sec. 4, Ch. 570, L. 1979.

Cross-References

Personalty acquired through foreclosure — domestic life insurers — applicability as asset, 33-2-502.

Personalty acquired through foreclosure — domestic life insurers — valuation, 33-2-534.

Purchase money mortgages — domestic life insurers — valuation, 33-2-535.

Real estate mortgages — general provisions, Title 71, ch. 1, part 1.

33-2-831. Chattel mortgages. (1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to 33-2-830, an insurer may lend or invest an amount not exceeding 20% of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than 5 years and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in

addition, in the case of apartment houses, motels, and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this part.

History: En. Sec. 124, Ch. 286, L. 1959; R.C.M. 1947, 40-3127.

Cross-References

Security in personalty — general provisions, Title 30, ch. 9.

Personalty acquired through foreclosure — applicability as asset, 33-2-502.

Personalty acquired through foreclosure — valuation, 33-2-534.

33-2-832. Real estate. An insurer may invest in real estate only if used for the purposes or acquired in the manners and within the limits as follows:

(1) the land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the commissioner, all such investments shall not aggregate more than 5% of the insurer's assets.

(2) real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of its business;

(3) real estate acquired in part payment of the consideration on the sale of other real estate owned by it if such transaction does not increase the insurer's investment in real estate;

(4) real estate acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this code;

(5) the seller's interest in real property subject to an agreement of purchase or sale. The sum invested in any such parcel of real estate shall not exceed 90% of the market value of such parcel provided the same consists of one- or two-family residential property and 80% of the market value of all other such parcels of real estate.

(6) real estate or any interest therein acquired or held by purchase, lease, or otherwise, other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, or club purposes, acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not, except with the commissioner's consent, have at any one time invested in real estate under this subsection an amount exceeding 5% of its assets.

(7) additional real estate and equipment incident to real estate if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subsections (2), (3), (4), or (6) of this section. Such real estate and equipment shall be included,

together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits and shall be subject to disposal at the same time and under the same conditions as applying to such enhanced real estate under 33-2-841.

(8) except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subsection (5), shall not at any one time exceed 10% of the insurer's assets.

History: **En. Sec. 125, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1961; R.C.M. 1947, 40-3128; amd. Sec. 5, Ch. 570, L. 1979.**

Cross-References

Reserve asset — transferability required, 33-2-531.

Real estate — domestic life insurers — valuation, 33-2-534.

33-2-833. Obligations of federal housing administrator and national mortgage associations. Notwithstanding other provisions of the law, it is lawful for any insurance company operating under the laws of this state to invest the funds in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: **En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part); amd. Sec. 11, Ch. 198, L. 1979.**

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-834 through 33-2-840 reserved.

33-2-841. Time limit for disposal of real estate — extension. (1) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under 33-2-832(1) within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

(2) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under subsections (2), (3), and (4) of 33-2-832 within 5 years after the date of acquisition.

(3) Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate unless the insurer elects to hold such real estate as an investment for income purposes under 33-2-832(6), in which event thereafter such real estate shall be deemed to have been acquired at a cost equal to its book value at the time of such election and to be held under and subject to the provisions of such subsection (6).

History: **En. Sec. 126, Ch. 286, L. 1959; R.C.M. 1947, 40-3129.**

33-2-842. Time limit for disposal of other ineligible property and securities — extension. (1) Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility, except that any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 3, 33-2-1211, or 33-2-1212.

(2) Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

History: En. Sec. 127, Ch. 286, L. 1959; R.C.M. 1947, 40-3130.

33-2-843. Failure to dispose of real estate, personal property, or securities — effect — penalty. (1) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner, as provided in 33-2-841 or 33-2-842, shall not be allowed as an asset of the insurer.

(2) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner may, in his discretion, suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by his order, specify.

History: En. Sec. 128, Ch. 286, L. 1959; R.C.M. 1947, 40-3131.

33-2-844 through 33-2-850 reserved.

33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its title plant, as defined in 33-25-105, and equipment and, with the commissioner's consent, in stock of abstract companies and of title insurance producers as defined in 33-25-105.

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost.

History: En. Sec. 129, Ch. 286, L. 1959; R.C.M. 1947, 40-3132; amd. Sec. 17, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

Cross-References

Assets allowed, 33-2-501.

33-2-852. Investments of foreign insurers. The investment portfolio of a foreign insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as that required under this part for similar funds of like domestic insurers. For the purposes of this provision, the domicile of an alien insurer, other than a life insurer formed under the laws of Canada, shall be deemed to be that state in which it maintains its principal deposit.

History: En. Sec. 131, Ch. 286, L. 1959; R.C.M. 1947, 40-3134.

Part 9

Rehabilitation and Liquidation (Repealed. Sec. 61, Ch. 383, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-901 through 33-2-947. En. Sec. 566 thru 596, Ch. 286, L. 1959; R.C.M. 1947, 40-5101 thru 40-5133.

33-2-948. En. 40-5134 by Sec. 2, Ch. 200, L. 1977; R.C.M. 1947, 40-5134.

Part 10

Stock Transfers — Holding Companies (Repealed. Sec. 1, Ch. 239, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-1001 through 33-2-1007. En. Sec. 2 through 8, Ch. 269, L. 1967; R.C.M. 1947, 40-5502(part), 40-5503 thru 40-5508.

Part 11

Affiliation and Merger — Holding Company Systems

33-2-1101. Definitions. As used in this part, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) An "affiliate" of or person "affiliated" with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" shall have the same meaning as set forth in 33-1-201, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall not include any securities broker performing no more than the usual and customary broker's function.

(6) A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(8) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971; R.C.M. 1947, 40-5509(part).

33-2-1102. Authorization of subsidiaries. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance producer for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) rendering other services related to the operations of an insurance business, including but not limited to actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) ownership and management of assets which the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, insurance producers, and other forms of consumer financing;

(11) any other business activity determined by the commissioner to be reasonable ancillary to an insurance business;

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(a); amd. Sec. 1, Ch. 713, L. 1989.

33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification —

divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders, provided that after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there must be included total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders, considering the investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer must include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which is calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest a greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) are not subject to any of the otherwise applicable restrictions or prohibitions contained in this part applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then outstanding principal

balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment is made, the investment meets the requirements for investment under any other section of this part and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(b) thru (e); amd. Sec. 12, Ch. 198, L. 1979; amd. Sec. 142, Ch. 575, L. 1981; amd. Sec. 2, Ch. 620, L. 1989.

33-2-1104. Acquisition of control of or merger with domestic insurer — filing requisites. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"):

(i) if such person is an individual, his principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subsection (i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence) and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) a description of any recommendations to purchase any security referred to in subsection (1) made during the 12 calendar months preceding the filing of the statement, by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(3) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (2) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by subsection (2) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(5) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(a) thru (c).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

Securities Act of Montana, Title 30, ch. 10.

33-2-1105. Approval by commissioner — hearings — notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing thereon, he finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days notice thereof must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith is entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to subsections (1) through (4) of 33-2-1104 and all notices of public hearings held pursuant to subsection (1) must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(d), (e); amd. Sec. 3, Ch. 620, L. 1989.

Cross-References

Administrative hearings, Title 2, ch. 4, part 6.

Discovery — District Court proceedings, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

33-2-1106. Exemptions — violations — jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section do not apply to an offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person is considered to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at his last-known address.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(f) thru (h); amd. Sec. 4, Ch. 620, L. 1989.

Cross-References

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1107 through 33-2-1110 reserved.

33-2-1111. Registration of insurers — requisites — termination. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner, which must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) the following agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) any pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding are not material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each change or addition.

(7) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(9) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(a) thru (g); amd. Sec. 5, Ch. 620, L. 1989; amd. Sec. 45, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in second sentence of (1), before "15 days", deleted "60 days after July 1, 1971, or" and before "unless" deleted "whichever is later"; deleted second sentence of (6) that read: "Except as provided in 33-2-1114, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration thereof"; and made minor changes in style.

33-2-1112. Exemptions — disclaimer — violations. (1) The provisions of 33-2-1111 and this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of 33-2-1111 and this section.

(2) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(3) The failure to file a registration statement or any amendment thereto required by 33-2-1111 and this section within the time specified for such filing shall be a violation of 33-2-1111 and this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(h) thru (j).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1113. Transactions with affiliates — standards. (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(iii) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, and cost-sharing arrangements; and

(v) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(a), (b); amd. Sec. 6, Ch. 620, L. 1989; amd. Sec. 10, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in (1)(d), near beginning before "clearly", deleted "be so maintained as to"; and made minor changes in style.

33-2-1114. Dividends and other distributions — commissioner approval. (1) An insurer subject to registration under 33-2-1111 and 33-2-1112 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration of the dividend or distribution and has not within the period disapproved the payment or the commissioner has approved payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds 10% of the insurer's surplus as

regards policyholders as of December 31 next preceding, but may not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration may not confer rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the 30-day period referred to in subsection (1).

(4) An insurer subject to subsection (1) may not pay any other dividend or make any other distribution to its shareholders unless the insurer has notified the commissioner of the payment 15 days prior to the payment date. The notice must be kept confidential until the payment date of the dividend. The commissioner may order that a dividend not be paid if the commissioner finds that the insurer's surplus as regards policyholders, following the payment to shareholders, would be inadequate or could lead the insurer to a hazardous financial condition.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(c); amd. Sec. 5, Ch. 534, L. 1987; amd. Sec. 46, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (4) prohibiting payment of dividends unless the Commissioner has been notified; and made minor changes in style.

33-2-1115. Examination. (1) In addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner also has the power to order any insurer registered under 33-2-1111 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as are necessary to ascertain the financial condition or legality of conduct of the insurer. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) is liable for and shall pay the expense of the examination.

History: En. Sec. 6, Ch. 64, L. 1971; R.C.M. 1947, 40-5514; amd. Sec. 47, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (1), at beginning, deleted "Subject to the limitation contained in this section and"; deleted former (2) that read: "The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected"; and made minor changes in style.

33-2-1116. Confidentiality of information. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and

33-2-1112 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971; R.C.M. 1947, 40-5515.

Cross-References

Records open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1117. Rules. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this part.

History: En. Sec. 8, Ch. 64, L. 1971; R.C.M. 1947, 40-5516.

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1118. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer thereof has committed or is about to commit a violation of this part or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark County for an order enjoining such insurer or such director, officer, employee, or insurance producer thereof from violating or continuing to violate this part or any such rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(a); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1119. Voting of securities — prohibition — injunction — sequestration. (1) No security which is the subject of any agreement or arrangement regarding acquisition or which is acquired or to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(2) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner

hereunder, the insurer or the commissioner may apply to the district court for Lewis and Clark County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of 33-2-1113 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part or any rule or order issued by the commissioner hereunder, the district court for Lewis and Clark County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this part. Notwithstanding any other provisions of law, for the purposes of this part the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(b), (c).

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1120. Criminal or civil proceedings — penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of $100 for each day of delinquency. The maximum penalty under this subsection is $25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in his individual capacity, a fine of not more than $5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the

contract and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or insurance producer thereof.

(5) Any insurer which willfully violates this part may be fined not more than $25,000.

(6) Any individual who willfully violates this part may be fined not more than $5,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both.

History: En. Sec. 10, Ch. 64, L. 1971; R.C.M. 1947, 40-5518; amd. Sec. 7, Ch. 620, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Criminal Procedure, Title 46.

33-2-1121. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this part which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971; R.C.M. 1947, 40-5519.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971; R.C.M. 1947, 40-5520.

Cross-References

Contested administrative cases, 2-4-102; Title 2, ch. 4, part 6.

Licenses — withdrawal or revocation, 2-4-631.

33-2-1123. Judicial review — mandamus. (1) Any person aggrieved by any act, determination, rule, or order or any other action of the commissioner pursuant to this part may appeal therefrom to the district court for Lewis and Clark County. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part may petition the district court for Lewis and Clark County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971; R.C.M. 1947, 40-5521.

Cross-References

Mandamus, Title 27, ch. 26.

Appeals from Commissioner, 33-1-711.

33-2-1124. Conflict with other laws. All laws and parts of laws of this state inconsistent with this part are hereby superseded with respect to matters covered by this part.

History: En. Sec. 14, Ch. 64, L. 1971; R.C.M. 1947, 40-5522.

33-2-1125. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time that the distributions were paid is liable up to the amount of distributions or payments that the person received. Any person who otherwise controlled the insurer at the time that the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent

insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

History: En. Sec. 48, Ch. 596, L. 1993.

Part 12
Limit of Risk — Reinsurance

33-2-1201. Limit of risk. (1) An insurer may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of the other hazard insured against.

(3) Reinsurance ceded as authorized by this part must be deducted in determining risk retained. As to surety risks, deduction must also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section only relates to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, is considered to include any voluntary reserves which are not required pursuant to law and are determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section does not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, sprinklered risks, or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

History: En. Sec. 80, Ch. 286, L. 1959; R.C.M. 1947, 40-2909; amd. Sec. 49, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 near beginning of (3) substituted "this part must" for "33-2-1205 shall"; and made minor changes in style.

33-2-1202 through 33-2-1204 reserved.

33-2-1205. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 81, Ch. 286, L. 1959; R.C.M. 1947, 40-2910; amd. Sec. 8, Ch. 620, L. 1989.

33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing. The commissioner may in his discretion hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after filing the proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

History: En. 40-2911 by Sec. 1, Ch. 303, L. 1977; R.C.M. 1947, 40-2911; amd. Sec. 4, Ch. 518, L. 1983.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1207. Interest in reinsurance. The original insured has no interest in a contract of reinsurance.

History: En. Sec. 280, Ch. 286, L. 1959; R.C.M. 1947, 40-3723.

33-2-1208 through 33-2-1210 reserved.

33-2-1211. Bulk reinsurance — stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of bulk reinsurance, but no such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he shall so notify the insurer in writing specifying his reasons therefor.

History: En. Sec. 464, Ch. 286, L. 1959; R.C.M. 1947, 40-4747.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1212. Bulk reinsurance — mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer, pursuant to 33-3-216, of his equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

History: En. Sec. 465, Ch. 286, L. 1959; R.C.M. 1947, 40-4748.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1213 through 33-2-1215 reserved.

33-2-1216. Credit allowed domestic ceding insurer. (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(i) maintains a surplus with regard to policyholders in an amount that is not less than $20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(ii) maintains a surplus with regard to policyholders in an amount less than $20 million and whose accreditation has been approved by the commissioner.

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than $20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than $20 million.

(ii) In the case of a group of individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a surplus with the trustee of which $100 million must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(iii) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iii)(B) apply, to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of $10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which $100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

History: En. Sec. 28, Ch. 596, L. 1993.

33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

History: En. Sec. 29, Ch. 596, L. 1993.

33-2-1218. Reinsurance agreements affected. Sections 33-2-1216 and 33-2-1217 apply to all cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or renewal date on or before April 1, 1993.

History: En. Sec. 30, Ch. 596, L. 1993.

Part 13

Supervision, Rehabilitation, and Liquidation

Part Cross-References

Notice to Attorney General — court action by state agency, 25-1-501.

33-2-1301. Short title. This part shall be cited as the "Insurers Supervision, Rehabilitation, and Liquidation Act".

History: En. Sec. 1, Ch. 383, L. 1979.

33-2-1302. Construction and purpose. (1) This part may not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(2) This part shall be liberally construed to effect the purpose stated in subsection (3).

(3) The purpose of this part is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(b) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(c) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(d) equitable apportionment of any unavoidable loss;

(e) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

History: En. Sec. 1, Ch. 383, L. 1979.

33-2-1303. Definitions. For the purposes of this part the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under 33-2-1321 or 33-2-1322. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this state;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) operating under a license or certificate of authority, as an insurer, issued by the commissioner.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(a) when in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Montana insurance guaranty association, the workers' compensation security fund, the Montana life and health insurance guaranty association, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

(i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within 30 days after it becomes payable; or

(ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(A) any capital and surplus required by law for its organization; or

(B) the total par or stated value of its authorized and issued capital stock;

(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

(b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute or by the commissioner upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect 33-2-1342(1), 33-2-1381, 33-2-1382, and 33-2-1384 through 33-2-1386 are in force and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States.

(19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with property or with an interest therein or with the possession thereof or fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.

History: En. Sec. 2, Ch. 383, L. 1979.

Cross-References

Assets and liabilities — reserves, Title 33, ch. 2, part 5.

Montana Insurance Guaranty Association, Title 33, ch. 10, part 1.

Montana Life and Health Insurance Guaranty Association Act, Title 33, ch. 10, part 2.

Workers' compensation security fund, 39-71-2206.

33-2-1304. To whom proceedings may be applied. The proceedings authorized by this part may be applied to:

(1) all insurers who are doing or have done insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) all nonprofit service plans and all fraternal benefit societies and beneficial societies; or

(6) all title insurance companies.

History: En. Sec. 3, Ch. 383, L. 1979.

33-2-1305. Who may bring action — procedure exclusive. (1) No delinquency proceeding may be commenced under this part by anyone other than the commissioner, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this part.

History: En. Sec. 4, Ch. 383, L. 1979.

33-2-1306. Personal jurisdiction. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Montana Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(1) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the insurance producer or broker in any action on or incident to the obligation;

(2) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced or is an insurance producer or broker of or for the reinsurer in any action on or incident to the reinsurance contract; or

(3) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

History: En. Sec. 4, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Service on corporations and foreign corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1307. Stay pending out-of-state proceedings. If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

History: En. Sec. 4, Ch. 383, L. 1979.

33-2-1308. Venue. All actions herein authorized shall be brought in the district court in the county in which the office of the commissioner is located.

History: En. Sec. 4, Ch. 383, L. 1979.

Cross-References

Office of Commissioner — Lewis and Clark County, Art. III, sec. 2, Mont. Const.; Art. VI, sec. 1, Mont. Const.; 2-15-1902.

33-2-1309. Injunctions and orders. (1) Any receiver appointed in a proceeding under this part may at any time apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with a proceeding under this part;

(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(h) the levying of execution against the insurer, its assets, or its policyholders;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under this part.

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1).

History: En. Sec. 5, Ch. 383, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1310. Cooperation of officers, owners, and employees. (1) Any officer, manager, director, trustee, owner, employee, or insurance producer of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" includes but is not limited to the following:

(a) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.

(2) No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

(4) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the commissioner issued validly under this part may:

(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner.

History: En. Sec. 6, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

Misdemeanor, 45-2-101.

33-2-1311. Bonds of commissioner and his deputies. In any proceeding under this part, the commissioner and his deputies are responsible on their official bonds for the faithful performance of their duties. If the court finds it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of administration.

History: En. Sec. 7, Ch. 383, L. 1979.

Cross-References

Official bonds — state officers, Title 2, ch. 9, part 6.

33-2-1312 through 33-2-1320 reserved.

33-2-1321. Commissioner's summary orders and supervision proceedings. (1) Whenever the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under this part, he may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct or eliminate such conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the commissioner shall notify the insurer of his determination and furnish to the insurer a written list of the commissioner's requirements to abate his determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), he shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer

may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

(a) dispose of, convey, or encumber any of its assets or its business in force;
(b) withdraw from any of its bank accounts;
(c) lend any of its funds;
(d) invest any of its funds;
(e) incur any debt, obligation, or liability;
(f) merge or consolidate with another company; or
(g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under 33-2-1331 or 33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the commissioner would base his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him was then still in effect, he is subject to a civil penalty imposed by the district court not to exceed $10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of this part, including any person described in 33-2-1310(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, said person is personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs.

History: En. Sec. 9, Ch. 383, L. 1979.

Cross-References

Hearings and meetings of public agencies open to public, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

Notice of hearing — administrative proceeding, 2-3-104, 2-4-601.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Injunctions, Title 27, ch. 19.

33-2-1322. Court's seizure order. (1) The commissioner may file in a district court of this state a petition alleging, with respect to a domestic insurer:

(a) that there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this part;

(b) that the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) the contents of an order considered necessary by the commissioner.

(2) Upon a filing under subsection (1), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, insurance producers, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it considers desirable after such notice as it considers appropriate and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this part after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this part shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

History: En. Sec. 10, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Initiation of actions, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance therewith, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him in a confidential file.

History: En. Sec. 11, Ch. 383, L. 1979.

Cross-References

Deliberations of state agencies open to public, Art. II, sec. 9, Mont. Const.; 2-3-203.

Records of state agencies available for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1324 through 33-2-1330 reserved.

33-2-1331. Grounds for rehabilitation. The commissioner may apply by petition to a district court for an order authorizing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and

after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and the person's influence on management.

(6) After demand by the commissioner under 33-1-408 or under this part, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this part.

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under 33-2-1321.

(10) The insurer has failed to pay within 60 days after the due date any obligation to any state or any subdivision of the state or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter, except that nonpayment may not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this part.

History: En. Sec. 12, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 50, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 near beginning of (6) substituted "33-1-408" for "33-1-403"; and made minor changes in style.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Suspension or revocation of certificate of authority — special grounds, 33-2-119.

Theft, 45-6-301.

Defrauding creditors, 45-6-315.

Forgery, 45-6-325.

33-2-1332. Rehabilitation orders. (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or clerk and recorder of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the county clerk and recorder would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order.

(3) Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer.

History: En. Sec. 13, Ch. 383, L. 1979.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

33-2-1333. Powers and duties of the rehabilitator. (1) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of his office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(2) The rehabilitator may take such action as necessary to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, insurance producer, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan and after such notice and hearings

as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under 33-2-1351 and 33-2-1352 to avoid fraudulent transfers.

History: En. Sec. 14, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

33-2-1334. Effect of proceedings on pending and potential litigation. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

History: En. Sec. 15, Ch. 383, L. 1979.

Cross-References

Statutes of Limitation, Title 27, ch. 2.

33-2-1335. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

History: En. Sec. 15, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1336. Termination of rehabilitation. (1) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under 33-2-1341. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under 33-2-1331 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

History: En. Sec. 16, Ch. 383, L. 1979.

33-2-1337 through 33-2-1340 reserved.

33-2-1341. Grounds for liquidation. The commissioner may petition the district court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) of any ground for an order of rehabilitation as specified in 33-2-1331, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) that the insurer is insolvent; or

(3) that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

History: En. Sec. 17, Ch. 383, L. 1979.

33-2-1342. Liquidation orders. (1) An order to liquidate the business of a domestic insurer must appoint the commissioner and the commissioner's successors in office liquidator and shall direct the liquidator to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the clerk and recorder of the county in which its principal office or place of business is located or, in the case of real estate, with the clerk and recorder of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in 33-2-1343 and 33-2-1366.

(3) An order to liquidate the business of an alien insurer domiciled in this state must be in the same terms and have the same legal effect as an order

to liquidate a domestic insurer, except that the assets and the business in the United States are the only assets and business included in the order.

(4) At the time of petitioning for an order of liquidation or at any time after petitioning, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section must require accounting to the court by the liquidator. Accountings must be at intervals as the court specifies in its order.

(6) (a) Within 5 days after the initiation of an appeal of an order of liquidation that has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan must provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation, including the ground of insolvency. In the event that the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties, as well as other policyholders and claimants, as the commissioner finds to be fair and equitable, considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the commissioner, and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action does not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(b) The appeal pendency plan may not supersede or affect the obligations of any insurance guaranty association.

(c) A plan must provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, so that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon any appeal, the company may not be released from delinquency proceedings unless all funds advanced by any guaranty association, including reasonable administrative expenses that relate to obligations of the company, have been repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment has been made with the consent of all applicable guaranty associations.

History: En. Sec. 18, Ch. 383, L. 1979; amd. Sec. 51, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (6) regarding implementation of an appeal pendency plan; and made minor changes in style.

33-2-1343. Continuance of policy coverage. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) a period of 30 days from the date of entry of the liquidation orders;

(b) the expiration of the policy coverage;

(c) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(d) the liquidator has effected a transfer of the policy obligation pursuant to 33-2-1345(1)(h).

(2) An order of liquidation under 33-2-1342 terminates coverages at the time specified in subsection (1) for purposes of any other statute.

(3) Policies of life or health insurance or annuities continue in force for such period and under such terms as provided by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2).

History: En. Sec. 19, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1344. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

History: En. Sec. 20, Ch. 383, L. 1979.

33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for him under this part and determine his reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) employ insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing and in connection therewith require the production of any books, papers, records, or other documents which he considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts;

(ii) do such other acts as are necessary to collect, conserve, or protect its assets or property, including selling, compounding, compromising, or assigning debts for collection purposes on such terms and conditions as he considers best; and

(iii) pursue any creditor's remedies available to enforce his claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into such contracts as are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated or otherwise provided for as may be necessary for the accomplishment of or in aid of the purpose of liquidation.

History: En. Sec. 21, Ch. 383, L. 1979; amd. Sec. 143, Ch. 575, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Intervention in proceedings, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Statutes of Limitation, Title 27, ch. 2.

Receivers — general provisions, Title 27, ch. 20, part 1.

Statute of Frauds, 28-2-903.

Usury, 31-1-107, 31-1-108.

Guaranty associations, Title 33, ch. 10.

33-2-1346. Notice to creditors and others. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(b) by first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) by first-class mail to all insurance producers of the insurer;

(d) by first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last-known address as indicated by the records of the insurer; and

(e) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations that the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) requires claimants to file with the liquidator their claims together with proper proofs of the claims under 33-2-1365, on or before a date the liquidator specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) (a) Notice under subsection (1) to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(b) The liquidator shall promptly provide to the guaranty associations information concerning the identities and addresses of the policyholders and their policy coverages as is within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including coverage of claims and continuation or termination of coverages.

(4) If notice is given in accordance with this section, the distribution of assets of the insurer under this part is conclusive with respect to all claimants, whether or not they received notice.

History: En. Sec. 22, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 52, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (3) regarding notice of availability of state guaranty association coverage; and made minor changes in style.

33-2-1347. Duty of insurance producers to give notice. (1) Every person who receives notice in the form prescribed in 33-2-1346 that an insurer which he represents as an insurance producer is the subject of a liquidation order shall within 15 days of such notice give notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the insurance producer's records to each policyholder or other person named in any policy issued through the insurance producer by the insurer if he has a record of the address of the policyholder or other person. A policy shall be considered issued through an insurance producer if the insurance producer has a property interest in the expiration of the policy or if the insurance producer has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the insurance producer, identification of the policy impaired, and the nature of the impairment, including termination of coverage as described in 33-2-1343. Notice by a general insurance producer satisfies the notice requirement for any insurance producers under contract to him. Each insurance producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any insurance producer failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000 and may have his license suspended, after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate.

History: En. Sec. 23, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licenses — administrative proceedings, 2-4-631.

Hearings by Commissioner, 33-1-701.

Insurance producer's license — suspension, Title 33, ch. 17, part 10.

33-2-1348. Effect of proceedings on pending and potential litigation — actions by liquidator. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity may be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or such time in addition to 2 years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

History: En. Sec. 24, Ch. 383, L. 1979.

Cross-References

Statutes of Limitation, Title 27, ch. 2.

33-2-1349. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

History: En. Sec. 24, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1350. Collection and listing of assets. (1) As soon as practicable after the liquidation order but not later than 120 days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court, and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with 33-2-1363 fulfills the requirements of subsection (1) of this section.

History: En. Sec. 25, Ch. 383, L. 1979.

33-2-1351. Fraudulent transfers prior to petition. (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this part is fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this part which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor, or obligee.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under 33-2-1353(3).

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer is considered fraudulent and may be avoided by the receiver under subsection (1) if:

(a) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

History: En. Sec. 26, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

33-2-1352. Fraudulent transfer after petition. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Nothing in this part impairs the negotiability of currency or negotiable instruments.

History: En. Sec. 27, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Effect of recordation — real property, 70-21-302.

33-2-1353. Voidable preferences and liens. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this part, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be considered preferences if made or suffered within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not he held such position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the meaning of subsection (2), if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

History: En. Sec. 28, Ch. 383, L. 1979.

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Priority of liens, 71-3-113.

33-2-1354. Procedure for voiding preferences and liens. (1) The district court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under 33-2-1353 through 33-2-1357. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien and, if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(2) The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (1), to the extent of the amount paid to the liquidator.

History: **En. Sec. 28, Ch. 383, L. 1979.**

33-2-1355. Set off for further credit given in good faith. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

History: **En. Sec. 28, Ch. 383, L. 1979.**

33-2-1356. Transactions to pay for attorneys' services. If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this part or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court and the excess may be recovered by the liquidator for the benefit of the estate, provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney at law for services rendered or to be rendered shall be governed by the provision of 33-2-1353(1)(b)(iv).

History: **En. Sec. 28, Ch. 383, L. 1979.**

33-2-1357. Personal liability. (1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under 33-2-1353(1) is personally liable therefor and is bound to account to the liquidator.

(3) Nothing in this section prejudices any other claim by the liquidator against any person.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1358. Claims of holders of void or voidable rights. (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 33-2-1364 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1).

History: En. Sec. 29, Ch. 383, L. 1979.

33-2-1359. Setoffs and counterclaims. (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this part shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) and 33-2-1362.

(2) No setoff or counterclaim may be allowed in favor of any person when:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer or is to pay a balance upon a subscription to the capital stock of the insurer or is in any other way in the nature of a capital contribution; or

(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.

History: En. Sec. 30, Ch. 383, L. 1979.

33-2-1360. Assessments against members of insurer. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under 33-2-1342 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities;

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided in subsection (1), including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to his last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him, pursuant to subsection (3), together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on or before such return day the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means.

History: En. Sec. 31, Ch. 383, L. 1979.

33-2-1361. Reinsurer's liability. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor may not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

History: En. Sec. 32, Ch. 383, L. 1979.

33-2-1362. Recovery of premiums owed. (1) (a) An insurance producer or any other person responsible for the payment of a premium, other than the insured, shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both may not be allowed to an insurance producer for any amounts advanced to the insurer by the insurance producer on behalf of but in the absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend or revoke or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than $1,000 for each act in violation of this section by such party.

(3) Before the commissioner may take any action as set forth in subsection (2), he shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, when a hearing on the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner, if he finds a violation, shall impose such penalties under subsection (2) as he considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court.

History: En. Sec. 33, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licensure — administrative proceedings, 2-4-631.

Hearing before Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

Suspension or revocation of insurance producer's license, Title 33, ch. 17, part 10.

33-2-1363. Domiciliary liquidator's proposal to distribute assets. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, classes 1 and 2;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in 33-2-1371 in accordance with such priorities (no bond may be required of any such association); and

(e) a full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(5) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsections (2)(a) and (2)(b).

History: En. Sec. 34, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1364. Filing of claims. (1) Proof of all claims shall be filed with the liquidator in the form required by 33-2-1365 on or before the last day for filing specified in the notice required under 33-2-1346, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant, and his claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under 33-2-1351 through 33-2-1357 or was voluntarily surrendered under 33-2-1358, and the filing satisfies the conditions of 33-2-1358; and

(c) the valuation under 33-2-1370 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

History: En. Sec. 35, Ch. 383, L. 1979.

33-2-1365. Proof of claim. (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(a) the particulars of the claim, including the consideration given for it;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimants;

(f) a copy of the written instrument which is the foundation of the claim;

(g) the name and address of the claimant and the attorney who represents him, if any.

(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

History: En. Sec. 36, Ch. 383, L. 1979.

33-2-1366. Special claims. (1) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with 33-2-1364. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under 33-2-1332 or 33-2-1342.

History: En. Sec. 37, Ch. 383, L. 1979.

Cross-References

Legal rate of interest, 31-1-106.

33-2-1367. Claims of insureds or claimants against insureds. (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by 33-2-1346, whichever is later, he is an unexcused late filer.

(3) The liquidator shall make his recommendations to the court under 33-2-1371 for the allowance of an insured's claim under subsection (2), after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this sub-

section shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

History: En. Sec. 38, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1368. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his attorney and to any other persons directly affected not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

History: En. Sec. 39, Ch. 383, L. 1979.

33-2-1369. Claims of sureties. (1) Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person.

(2) The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

History: En. Sec. 40, Ch. 383, L. 1979.

Cross-References

When surety may require creditor to pursue remedy, 28-11-416.

Surety's right to reimbursement and contribution, 28-11-417.

33-2-1370. Claims of secured creditors. (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(a) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured.

History: En. Sec. 41, Ch. 383, L. 1979.

Cross-References

Collection rights of secured party, 30-9-502.

33-2-1371. Priority of distribution. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be as follows:

(1) Class 1—the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable attorney's fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2—debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class 3—all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life

insurance or as gratuities. No payment by an employer to his employee may be treated as a gratuity.

(4) Class 4—claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(5) Class 5—claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8).

(6) Class 6—claims filed late or any other claims other than claims under subsections (7) and (8).

(7) Class 7—surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(8) Class 8—the claims of shareholders or other owners.

History: En. Sec. 42, Ch. 383, L. 1979.

33-2-1372. Liquidator's recommendations to the court concerning claims. (1) The liquidator shall review all claims duly filed in the liquidation and make such further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under 33-2-1368. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to 33-2-1368. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

History: En. Sec. 43, Ch. 383, L. 1979.

33-2-1373. Distribution of assets. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

History: En. Sec. 44, Ch. 383, L. 1979.

33-2-1374. Unclaimed and withheld funds. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest except in accordance with 33-2-1371 to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within 6 years from the discharge of the liquidator shall be considered to have been abandoned and shall be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under 33-2-1366 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with 33-2-1371. Any sums remaining which under 33-2-1371 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) unless the commissioner in his discretion petitions the court to reopen the liquidation under 33-2-1376.

History: En. Sec. 45, Ch. 383, L. 1979.

Cross-References

Escheated property — claims, Title 72, ch. 14.

33-2-1375. Termination of liquidation proceedings. (1) When all assets justifying the expense of collection and distribution have been collected and distributed under this part, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

History: En. Sec. 46, Ch. 383, L. 1979.

33-2-1376. Reopening liquidation. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

History: En. Sec. 47, Ch. 383, L. 1979.

33-2-1377. Disposition of records during and after liquidation. When it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

History: En. Sec. 48, Ch. 383, L. 1979.

Cross-References

Public records management, Title 2, ch. 6, part 2.

33-2-1378. Audit of the receiver's books. The district court may, as it considers desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this part, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

History: En. Sec. 49, Ch. 383, L. 1979.

33-2-1379. Conservation of property of foreign or alien insurers. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in 33-2-1331;

(b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;

(c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;

(e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under 33-2-1380 to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under 33-2-1382 to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied, all costs shall be assessed against such party.

History: En. Sec. 50, Ch. 383, L. 1979.

33-2-1380. Liquidation of assets of foreign or alien insurers. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) any of the grounds in 33-2-1331 or 33-2-1341; or

(b) any of the grounds specified in subsections (1)(b) through (1)(d) of 33-2-1379.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond thereto as reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under 33-2-1382. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under 33-2-1382.

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under this part as are otherwise compatible with the provisions of this section.

History: En. Sec. 51, Ch. 383, L. 1979.

33-2-1381. Domiciliary liquidators in other states. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under 33-2-1382(3), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. He also has the right to recover all other assets of the insurer located in this state, subject to 33-2-1382.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law

with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under 33-2-1379 or 33-2-1380 or for an ancillary receivership under 33-2-1382 or, after approval by the district court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

History: En. Sec. 52, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the county clerk and recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state.

History: En. Sec. 53, Ch. 383, L. 1979; amd. Sec. 144, Ch. 575, L. 1981.

Cross-References

Recorder of deeds — County Clerk and Recorder, 7-4-2619, 70-21-201.

33-2-1383. Ancillary summary proceedings. The commissioner in his sole discretion may institute proceedings under 33-2-1321 through 33-2-1323 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

History: En. Sec. 54, Ch. 383, L. 1979.

33-2-1384. Claims of nonresidents against insurers domiciled in this state. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this part or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in 33-2-1385(2) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as to amount and as to priority against special deposits or other security located in such ancillary states but is not conclusive with respect to priorities against general assets under 33-2-1371.

History: En. Sec. 55, Ch. 383, L. 1979.

33-2-1385. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in 33-2-1364 and 33-2-1365. The ancillary receiver shall make his recommendation to the court as under 33-2-1372. He shall also arrange a date for hearing if necessary under 33-2-1368 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

History: En. Sec. 56, Ch. 383, L. 1979.

Cross-References

Residence — rules for determining, 1-1-215.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

33-2-1386. Exemption from legal process during pendency of liquidation. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution may be commenced or maintained in this state against the delinquent insurer or its assets.

History: En. Sec. 57, Ch. 383, L. 1979.

33-2-1387. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with 33-2-1370, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

History: En. Sec. 58, Ch. 383, L. 1979.

33-2-1388. Subordination of claims for noncooperation of ancillary receiver. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under 33-2-1371(7).

History: En. Sec. 59, Ch. 383, L. 1979.

33-2-1389 and 33-2-1390 reserved.

33-2-1391. Condition on release from delinquency proceedings. An insurer that is subject to any delinquency proceeding, whether formal, informal, administrative, or judicial, may not:

(1) be released from the proceeding, unless the proceeding is converted to a judicial rehabilitation or liquidation proceeding;

(2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(3) be returned to the control of its shareholders or private management; or

(4) have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the guaranty associations and interest on all payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

History: En. Sec. 35, Ch. 596, L. 1993.

33-2-1392. Indemnification of rehabilitator, liquidator, and employees — persons covered. (1) The persons entitled to protection under 33-2-1393 and 33-2-1394 are:

(a) all rehabilitators and liquidators responsible for the conduct of a delinquency proceeding under Title 33, chapter 2, including present and former rehabilitators and liquidators; and

(b) the employees of the rehabilitators and liquidators, including all present and former special deputies and assistant special deputies appointed by the commissioner, and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under Title 33, chapter 2.

(2) Attorneys, accountants, auditors, and other professional persons or firms, who are retained by the rehabilitator or liquidator as independent contractors, and their employees are not considered employees of the rehabilitator or liquidator for purposes of any cause of action initiated by the rehabilitator or liquidator against the independent contractor in the name of the rehabilitation or liquidation estate.

History: En. Sec. 36, Ch. 596, L. 1993.

33-2-1393. Indemnification of rehabilitator, liquidator, and employees. (1) If any legal action is commenced against the rehabilitator or liquidator or any employee of the rehabilitator or liquidator, whether against the rehabilitator, liquidator, or employee personally or in an official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the rehabilitator, liquidator, or employee arising out of or by reason of duties or employment, the rehabilitator, liquidator, or employee is indemnified from the assets of the insurer for all expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the rehabilitator, liquidator, or employee that gave rise to the claim did not arise out of or by reason of the rehabilitator's, liquidator's, or employee's duties or employment or was caused by intentional or willful and wanton misconduct.

(2) Attorney fees and related expenses incurred in defending a legal action for which indemnity is available under this section must be paid from the assets of the insurer, as the expenses are incurred and in advance of the final

disposition of the action, upon receipt of an undertaking by or on behalf of the rehabilitator, liquidator, or employee to repay the attorney fees and expenses. If, upon a final adjudication on the merits, it is determined that the rehabilitator, liquidator, or employee is not entitled to indemnity under this section, the payment must be made from the undertaking.

(3) An indemnification for expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(4) If actual or threatened litigation against a rehabilitator, liquidator, or employee for which indemnity may be available under this section occurs, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide indemnity must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the rehabilitator, liquidator, or employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(5) In lieu of segregation and reservation of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to fully secure the payment of all obligations under this section.

History: En. Sec. 37, Ch. 596, L. 1993.

33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees — court approval — applicability. (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) A legal action does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that

took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place.

History: En. Sec. 38, Ch. 596, L. 1993.

Part 14 reserved

Part 15

Regulation of Controlled Insurers and Controlling Producers

33-2-1501. Definitions. As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) The following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

History: En. Sec. 1, Ch. 596, L. 1993.

33-2-1502. Filing requirements. (1) Each domestic, foreign, and alien insurer authorized to transact insurance in this state shall, on or before March 1 of each year, file with the NAIC a copy of its annual statement convention form, along with any additional filings for the preceding year as prescribed by the commissioner. The information filed with the NAIC must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Amendments to the annual statement filing that are subsequently filed with the commissioner must also be filed with the NAIC.

(2) Foreign insurers domiciled in a state that has a law substantially similar to this section are considered to be in compliance with this section.

History: En. Sec. 2, Ch. 596, L. 1993.

33-2-1503. Immunity of NAIC. In the absence of actual malice, members of the NAIC; their authorized committees, subcommittees, task forces, delegates, and employees; and all others charged with the responsibility of collecting and processing the information developed from the filing of the annual statement convention forms are considered to act under the authority of 33-2-1502 through 33-2-1504. They are not subject to civil liability for libel, slander, or any other cause of action arising from their collection, review, analysis, or dissemination of information collected from the filings required by 33-1-408 through 33-1-410, 33-2-1216 through 33-2-1218, 33-2-1391 through 33-2-1394, Title 33, chapter 2, parts 15 through 17, and 33-11-110.

History: En. Sec. 3, Ch. 596, L. 1993.

33-2-1504. Confidentiality. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC insurance regulatory information systems are confidential and may not be disclosed by the department.

History: **En. Sec. 4, Ch. 596, L. 1993.**

33-2-1505 through 33-2-1508 reserved.

33-2-1509. Applicability of minimum standards. (1) The provisions of 33-2-1510 apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding the provisions of subsection (1), the provisions of 33-2-1510 do not apply if:

(a) the controlling producer:

(i) does not receive compensation based upon the amount of premiums written in connection with the insurance and places insurance only with:

(A) the controlled insurer; or

(B) the controlled insurer and a member or members of the controlled insurer's holding company system or the controlled insurer's parent, affiliate, or subsidiary; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(b) except for insurance business written through a residual market facility, the controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

History: **En. Sec. 5, Ch. 596, L. 1993.**

33-2-1510. Minimum standards. Unless there is a written contract between a controlling producer and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept business from the controlling producer and the controlling producer may not place business with the controlled insurer. The contract must be approved by the board of directors of the controlled insurer and must contain the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling producer shall render to the controlled insurer accounts detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the controlling producer.

(3) On at least a monthly basis, the controlling producer shall remit to the controlled insurer all funds due under the terms of the contract. The due date must be fixed so that premiums or installments of premiums collected must be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(4) In accordance with the provisions of this title, all funds collected for the controlled insurer's account must be held by the controlling producer in a

fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system. However, funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract may not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of subsection (7) and this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that on insurance business placed with the controlled insurer, the controlling producer is to be compensated contingent upon the controlled insurer's profits on that business, then the compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to 33-2-1512.

(10) The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business that the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance assumed and ceded, the guidelines must include a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

History: En. Sec. 6, Ch. 596, L. 1993.

33-2-1511. Audit committee. Each controlled insurer shall have an audit committee of the board of directors composed of independent directors.

The audit committee shall annually review the adequacy of the controlled insurer's loss reserves and meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner.

History: **En. Sec. 7, Ch. 596, L. 1993.**

33-2-1512. Annual report by independent actuary. In addition to any other required loss reserve certification, the controlled insurer shall, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner. The opinion must report the loss ratios for each line of business written and must attest to the adequacy of loss reserves established for losses incurred and outstanding as of the yearend, including losses incurred but not reported, on business placed by the producer.

History: **En. Sec. 8, Ch. 596, L. 1993.**

33-2-1513. Annual report to commissioner. The controlled insurer shall annually report to the commissioner:

(1) the amount of commissions paid to the producer;

(2) the percentage the amount represents of the net premiums written; and

(3) comparable amounts and the percentage paid to noncontrolling producers for placements of the same kinds of insurance.

History: **En. Sec. 9, Ch. 596, L. 1993.**

33-2-1514. Disclosure. (1) Except as provided in subsection (2), the producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured, disclosing the relationship between the producer and the controlled insurer.

(2) If the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the producer and that the subproducer has notified or will notify the insured.

History: **En. Sec. 10, Ch. 596, L. 1993.**

33-2-1515. Penalties. (1) (a) If the commissioner believes that a controlling producer or any other person has not materially complied with 33-2-1509 through 33-2-1514 or any regulation or order promulgated under 33-2-1509 through 33-2-1514, the commissioner, after notice and opportunity to be heard, may order the controlling producer to cease placing business with the controlled insurer.

(b) If it is found that because of the material noncompliance with 33-2-1509 through 33-2-1514, the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder or other appropriate relief.

(2) The receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer if:

(a) an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Title 33, chapter 2, part 13;

(b) the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with 33-2-1509 through 33-2-1514 or any regulation or order promulgated under 33-2-1509 through 33-2-1514; and

(c) the controlled insurer suffered any loss or damage from the noncompliance.

(3) This section does not affect the right of the commissioner to impose any other penalties provided for in this title.

(4) This section may not be construed to alter or affect the rights of policyholders, claimants, creditors, or other third parties.

History: En. Sec. 11, Ch. 596, L. 1993.

33-2-1516. Compliance — applicability. (1) Controlled insurers and controlling producers who are not in compliance with 33-2-1510 on October 1, 1993, have 60 days to come into compliance and shall comply with 33-2-1514 in all policies written or renewed on or after December 1, 1993.

(2) Sections 33-2-1509 through 33-2-1514 apply to insurers that are domiciled in this state or domiciled in a state that is not an accredited state that has in effect a substantially similar law.

(3) The provisions of Title 33, chapter 2, part 11, to the extent they are not superseded by 33-2-1509 through 33-2-1514, continue to apply to all entities within holding company systems subject to 33-2-1509 through 33-2-1514.

(4) An insurer may not continue to use the services of a managing general agent after December 1, 1993, unless the use complies with part 16 of this chapter.

(5) An insurer or reinsurer may not continue to use the services of a reinsurance intermediary after December 1, 1993, unless the use complies with part 17 of this chapter.

History: En. Sec. 12, Ch. 596, L. 1993.

33-2-1517. Rulemaking authority. (1) The commissioner may adopt rules implementing the provisions of 33-1-408 through 33-1-410, 33-2-1216 through 33-2-1218, 33-2-1391 through 33-2-1394, Title 33, chapter 2, parts 15 through 17, and 33-11-110.

(2) The authority of the commissioner to adopt rules is specifically extended, without limitation, to establish standards for companies considered to be in hazardous financial condition, to require annual audited financial reports, to regulate life and health reinsurance agreements, to provide for reports to the commissioner by holding company systems, and to establish accounting practices and procedures to be used by insurers in their annual statements.

History: En. Sec. 13, Ch. 596, L. 1993.

Part 16

Regulation of Managing General Agents

33-2-1601. Licensure of managing general agent. (1) A person, firm, association, or corporation may not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this part.

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

History: En. Sec. 14, Ch. 596, L. 1993.

33-2-1602. Managing general agent — required contract provisions. A person acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party. Whenever both parties share responsibility for a particular function, the written contract must specify the division of responsibilities. The contract must provide at least the following:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer, detailing all transactions, and shall remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer must be held by the managing general agent in a fiduciary capacity in a bank that is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent must be maintained. The insurer has access to and may copy all accounts and records that are related to its business, in a form usable by the insurer. The commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. The records must be retained pursuant to 33-3-401.

(5) The contract may not be assigned in whole or in part by the managing general agent.

(6) The contract must contain appropriate underwriting guidelines, including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks that may be written;

(d) maximum limits of liability;

(e) any applicable exclusions;

(f) the territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) The insurer may cancel or decline to renew any policy of insurance, as provided by law.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) all claims must be reported to the company in a timely manner;

(b) a copy of the claims file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed an amount determined by the commissioner or actually exceeds the limit set by the company, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;

(c) all claims files are the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent has reasonable access to and may copy the files on a timely basis.

(d) any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(10) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits, whether by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until:

(a) 1 year after they are earned for property insurance business;

(b) 5 years after they are earned on casualty business; and

(c) the profits have been verified.

(11) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including for reinsurance assumed and ceded:

(i) a list of reinsurers with which automatic agreements are in effect;

(ii) the coverages and amounts or percentages that may be reinsured; and

(iii) commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without ensuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without the prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

History: En. Sec. 15, Ch. 596, L. 1993.

33-2-1603. Duties of insurers. (1) The insurer must have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) At least semiannually, the insurer shall conduct an onsite review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within 30 days of entering into or termination of a contract with a managing general agent, the insurer shall provide the commissioner with written notification of the appointment or termination. Notices of appointment of a managing general agent must include a statement of duties that the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and the producer shall comply with this part within 30 days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its managing general agent. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or 33-2-1509 through 33-2-1514.

History: En. Sec. 16, Ch. 596, L. 1993.

33-2-1604. Examination authority. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

History: En. Sec. 17, Ch. 596, L. 1993.

33-2-1605. Penalties and liabilities. (1) If, after a hearing conducted in accordance with Title 33, chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the commissioner may order:

(a) a penalty in an amount of $5,000 for each separate violation;

(b) revocation or suspension of the producer's license; and

(c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing general agent.

(2) An order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to 33-1-711.

(3) This section does not limit the power of the commissioner to impose any other penalty provided in this title.

(4) This part does not limit the rights of policyholders, claimants, or auditors.

History: En. Sec. 18, Ch. 596, L. 1993.

Part 17

Regulation of Reinsurance Intermediaries

33-2-1701. Licensure of reinsurance intermediaries. (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state that has a law substantially similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license. The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1.

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section.

History: En. Sec. 19, Ch. 596, L. 1993.

33-2-1702. Required contract provisions — reinsurance intermediary-brokers. Transactions between a reinsurance intermediary-broker and the insurer it represents must be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, contain the following provisions:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render to the insurer accounts accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-broker. The reinsurance intermediary-broker shall remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution.

(4) The reinsurance intermediary-broker shall comply with the requirements of 33-2-1703.

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

History: En. Sec. 20, Ch. 596, L. 1993.

33-2-1703. Books and records — reinsurance intermediary-brokers. (1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction, showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required for cancellation;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of assuming reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) any related correspondence and memorandums;

(h) the proof of placement;

(i) the details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of the party making the retrocession and the percentage of each contract assumed or ceded;

(j) the financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer has access to and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker that are related to the insurer's business, in a form usable by the insurer.

History: En. Sec. 21, Ch. 596, L. 1993.

33-2-1704. Duties of insurers utilizing the services of a reinsurance intermediary-broker. (1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by 33-2-1701.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business unless the reinsurance intermediary-broker is under common control with the insurer and is subject to the provisions of Title 33, chapter 2, part 11.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

History: En. Sec. 22, Ch. 596, L. 1993.

33-2-1705. Required contract provisions — reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract specifying the responsibilities of each party. The contract must be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through a producer, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, include the following provisions:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owed to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including effective and expiration dates, cancellation provisions, notice required for cancellation, and disposition of outstanding reserves on covered risks;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memorandums;

(h) proof of placement;

(i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by 33-2-1707, including the identity of persons making the retrocessions and the percentage of each contract assumed or ceded;

(j) financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access to and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer must be set forth.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) all claims must be reported to the reinsurer in a timely manner;

(b) a copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) all claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and the right to copy the files on a timely basis.

(d) any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits may not be paid until:

(a) 1 year after the end of each underwriting period for property business;

(b) 5 years after the end of each underwriting period for casualty business;

(c) a later period set by the commissioner for specified lines of insurance; and

(d) the adequacy of reserves on remaining claims has been verified pursuant to 33-2-1707.

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

History: En. Sec. 23, Ch. 596, L. 1993.

33-2-1706. Prohibited acts. A reinsurance intermediary-manager may not:

(1) bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. The guidelines must include a list of reinsurers with which automatic agreements are in effect and, for each reinsurer, must include the coverages, amounts of percentages that may be reinsured, and commission schedules.

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without ensuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) collect any payment from a party making a retrocession, or commit the reinsurer to any claim settlement with a party making a retrocession, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 33, chapter 2, part 11;

(7) appoint a subreinsurance intermediary-manager.

History: En. Sec. 24, Ch. 596, L. 1993.

33-2-1707. Duties of reinsurers using services of reinsurance intermediary-manager. (1) A reinsurer may not engage the services of any person, firm, association, or corporation as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by 33-2-1701.

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged, prepared by an independent certified accountant, in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or, if applicable, 33-2-1701 through 33-2-1705.

History: En. Sec. 25, Ch. 596, L. 1993.

33-2-1708. Examination authority. (1) A reinsurance intermediary is subject to examination by the commissioner. The commissioner must have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

History: En. Sec. 26, Ch. 596, L. 1993.

33-2-1709. Penalties and liabilities. (1) (a) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 33, chapter 1, part 7, to be in violation of any provision of 33-2-1701 through 33-2-1708:

(i) shall, for each separate violation, pay a penalty in an amount not to exceed $5,000; and

(ii) is subject to revocation or suspension of its license.

(b) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to Title 33, chapter 1, part 7.

(3) This section does not limit the authority of the commissioner to impose any other penalties provided in the insurance law.

(4) Sections 33-2-1701 through 33-2-1708 do not limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights upon those persons.

History: En. Sec. 27, Ch. 596, L. 1993.

CHAPTER 3

DOMESTIC STOCK AND MUTUAL INSURERS

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Chapter Cross-References

Domestic insurers — taxation of real and personal property, Title 15, ch. 24, part 6.

Part 1
General Provisions

33-3-101. Scope of chapter. This chapter shall apply only to domestic stock insurers and domestic mutual insurers transacting or proposing to transact insurance on the cash premium or legal reserve plan, except that 33-3-414(2) and 33-3-503 shall also apply to foreign and alien insurers.

History: En. Sec. 418, Ch. 286, L. 1959; R.C.M. 1947, 40-4701.

33-3-102. Definitions. (1) A "domestic mutual insurer" is an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.

(2) A "domestic stock insurer" is an incorporated insurer with capital divided into shares and owned by its stockholders.

History: En. Secs. 419, 420, Ch. 286, L. 1959; R.C.M. 1947, 40-4702, 40-4703.

33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, 35-1-931 through 35-1-935 apply to the voluntary dissolution of a domestic insurer.

History: En. Sec. 421, Ch. 286, L. 1959; R.C.M. 1947, 40-4704; amd. Sec. 1, Ch. 389, L. 1987; amd. Sec. 188, Ch. 368, L. 1991.

Cross-References

Business corporations, Title 35, ch. 1.

33-3-104. Extinguishment of unused corporate charters. (1) The corporate charter of any corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of 36 consecutive months after January 1, 1961, is not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under law currently in force, is automatically hereby extinguished and nullified at the expiration of such 36-month period.

(2) The period during which any such corporation referred to in subsection (1) above is the subject of delinquency proceedings under part 13, chapter 2, of this title shall not be counted as part of any such 36-month period.

History: En. Sec. 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4750(2), (3); amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

Certificate of authority, 33-2-101.

Part 2
Formation

33-3-201. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) the name of the corporation. If a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be stated in the articles of incorporation but shall not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973; R.C.M. 1947, 40-4705.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the commissioner together with the filing fees therefor specified in 33-2-708. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, he shall endorse his approval upon each set of the articles, except that if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, he shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators together with a written statement of the reasons for such refusal. If approved by him, the commissioner shall then forward the articles of incorporation, with his approval endorsed thereon, to the incorporators. The incorporators shall forthwith file one set of the articles of incorporation with the secretary of state, one set with the commissioner, bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is to be located the corporation's principal place of business; and the remaining set of articles shall be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, he shall refuse to approve the same and shall return all sets of the proposed articles of incorporation to the proposed incorporators together with a written statement of the reasons for his refusal to approve.

(3) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings referred to in subsection (1) above, but it shall not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(4) A copy of the certificate of incorporation, duly certified by the secretary of state, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

History: En. Sec. 423, Ch. 286, L. 1959; R.C.M. 1947, 40-4706; amd. Sec. 1, Ch. 373, L. 1983.

Cross-References

Custody of records with Secretary of State, 2-6-111.

Administrative hearing before Commissioner, 33-1-701.

33-3-203. Amendment of articles of incorporation — grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of such a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.

(2) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(3) Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth such amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate, together with the filing fee specified therefor in 33-2-708. If he finds that the certificate and amendments comply with law, the commissioner shall endorse his approval upon each of the quadruplicate originals and return them to the insurer. The insurer shall forthwith file one set of such endorsed articles of amendment with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county in which is located the insurer's principal place of business, and retain the remaining set in the corporate records. The amendment shall be effective when such filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, he shall not approve the same and shall return the quadruplicate certificate of amendment to the insurer together with his written statement of reasons for nonapproval. The filing fee shall not be returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such reduction. If any such reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as such stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of such reduction.

History: En. Sec. 424, Ch. 286, L. 1959; R.C.M. 1947, 40-4707.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-204. Initial qualifications — domestic mutuals. (1) When newly organized, a domestic mutual insurer may be authorized to transact any of the kinds of insurance as are permitted under 33-2-108.

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code and must have unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance as in 33-2-109, subject further to the additional special surplus requirements of 33-2-110 applicable to such stock insurer. The minimum amount of surplus must thereafter be maintained unimpaired and placed on deposit with the commissioner. The deposit is subject to the provisions of chapter 2, part 6, of this title and 33-2-111.

History: En. Sec. 425, Ch. 286, L. 1959; R.C.M. 1947, 40-4708; amd. Sec. 10, Ch. 303, L. 1981.

Cross-References

Application for original certificate of authority, 33-2-115.

Curing impairment of capital deficiency — any lawful means authorized, 33-3-433.

33-3-205. Formation of mutual insurer — bond. (1) Before soliciting applications for insurance to raise surplus funds to qualify for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of $50,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) for the prompt return to applicant members of all premiums collected in advance;

(b) for payment of all indebtedness of the corporation; and

(c) for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within 1 year after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner $50,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than $50,000, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.

History: En. Sec. 426, Ch. 286, L. 1959; R.C.M. 1947, 40-4709; amd. Sec. 11, Ch. 303, L. 1981.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

33-3-206. Applications for insurance in formation of mutual insurer. (1) Upon receipt of the commissioner's approval of the bond or deposit as provided in 33-3-205, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.

(3) All such applications shall provide that:

(a) issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) no insurance is in effect unless and until the certificate of authority has been issued; and

(c) the prepaid premium or deposit and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than 1 year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applicants for insurance shall be by licensed insurance producers of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary insurance producer's licenses expiring on the date specified pursuant to subsection(3)(c) above to individuals qualified as for a resident insurance producer's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of insurance producers in general under chapter 17.

History: En. Sec. 427, Ch. 286, L. 1959; R.C.M. 1947, 40-4710; amd. Sec. 1, Ch. 713, L. 1989.

33-3-207. Formation of mutuals — trust deposit of premiums — issuance of policies. (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with 33-3-206(3)(c). The corporation shall file an executed copy of such trust agreement with the commissioner.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

History: En. Sec. 428, Ch. 286, L. 1959; R.C.M. 1947, 40-4711.

Cross-References

Banks and trust companies, Title 32, ch. 1.

33-3-208. Formation of mutuals — failure to qualify. If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within 1 year after the date of its certificate of incorporation, its corporate powers shall cease and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under 33-3-207.

History: En. Sec. 429, Ch. 286, L. 1959; R.C.M. 1947, 40-4712.

33-3-209 through 33-3-214 reserved.

33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by Title 35, chapter 1, part 8, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13.

History: En. Sec. 460, Ch. 286, L. 1959; R.C.M. 1947, 40-4743; amd. Sec. 13, Ch. 198, L. 1979; amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, right to vote may be limited to members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (d) above, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under subsection (c) above;

(f) shares are so offered to policyholders at a price not greater than to be thereafter offered to others but at not more than double the par value of such shares;

(g) the plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of such required capital.

History: En. Sec. 461, Ch. 286, L. 1959; R.C.M. 1947, 40-4744.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) below.

(2) No such merger or consolidation may be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) is contrary to law;

(b) inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, insurance producer, or employee of any insurer party to such merger or consolidation may receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or agreement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: (1) thru (6)En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971; Sec. 40-4745, R.C.M. 1947; (7)En. Sec. 467, Ch. 286, L. 1959; Sec. 40-4750, R.C.M. 1947; R.C.M. 1947, 40-4745, 40-4750(4); amd. Sec. 14, Ch. 198, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying his reasons therefor.

(6) Section 33-3-217(5) shall also apply as to mergers and consolidations of such mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: En. Secs. 463, 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4746, 40-4750(4).

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

Part 3

Management

33-3-301. Bylaws of mutual. (1) A domestic mutual insurer shall have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify, and revoke bylaws.

(2) The bylaws shall provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of such meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

History: En. Sec. 432, Ch. 286, L. 1959; R.C.M. 1947, 40-4715.

33-3-302. Bylaws of stock insurer — modification. Any bylaw so adopted at any meeting of stockholders of a domestic insurer shall not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions; but the board of directors shall not so revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. Any revocation or modification of bylaws made by the directors under this provision shall be presented at the next following meeting of stockholders for the information of the stockholders.

History: En. Sec. 433, Ch. 286, L. 1959; R.C.M. 1947, 40-4716.

33-3-303. Meetings of stockholders or members. (1) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state.

(2) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.

(3) Each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, receive and consider reports of

the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than 20 days' notice shall be given of such meeting in the manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

(5) If more than 15 months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call such a meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it shall be the duty of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue such call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members shall constitute a quorum;

(b) the stockholders or members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend such meeting, any stockholder or member present may be elected to act temporarily in lieu of any such absent officer;

(d) if a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director the adjournment must be to the next day and those who attend the second of such adjourned meetings, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

History: En. Sec. 434, Ch. 286, L. 1959; R.C.M. 1947, 40-4717.

33-3-304. Proxies — corrupt practices — penalty. (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease 11 months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after 3 years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(3) No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall be punishable as provided in 33-1-104.

History: En. Secs. 435, 436, Ch. 286, L. 1959; R.C.M. 1947, 40-4718, 40-4719.

33-3-305. Directors — number and election. (1) The affairs of every domestic insurer must be managed by the number of directors fixed in the insurer's bylaws, which may not be less than 5 or more than 21 directors.

(2) Directors must be elected by the members or stockholders of a domestic insurer, except as provided in 33-3-306, at the time and place and for the terms, not exceeding 3 years, as may be provided in the insurer's bylaws. A majority of directors must be elected from the members or stockholders of the domestic insurer.

(3) The term of a director shall extend until a successor has been elected and has qualified.

History: En. Sec. 437, Ch. 286, L. 1959; R.C.M. 1947, 40-4720; amd. Sec. 11, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (2), after "elected", deleted "from and" and inserted second sentence that read: "A majority of directors must be elected from the members or stockholders of the domestic insurer"; and made minor changes in style.

33-3-306. Participation of policyholders in election of directors of stock insurer. The bylaws of a domestic stock life insurer may provide a plan for its policyholders to participate with stockholders in the election of its directors.

History: En. Sec. 438, Ch. 286, L. 1959; R.C.M. 1947, 40-4721.

33-3-307. Bond of officers. (1) The president, secretary, and treasurer of every mutual insurer shall each file with the commissioner and thereafter maintain in force so long as he is such an officer a fidelity bond in the sum of $10,000 issued by an authorized corporate surety in favor of the insurer. In lieu of individual bonds, all such officers may be covered under a blanket bond for the same respective amounts, and which blanket bond shall likewise be filed with the commissioner.

(2) The premium for the bond shall be payable by the insurer.

(3) No such bond shall be subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of such cancellation.

(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.

(5) This section shall not be deemed to limit the amount of bonded protection which the insurer may carry as to any officer.

History: En. Sec. 439, Ch. 286, L. 1959; R.C.M. 1947, 40-4722.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

(3) This section shall not prohibit such a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

History: En. Sec. 440, Ch. 286, L. 1959; R.C.M. 1947, 40-4723.

33-3-309. Management and exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) The commissioner shall disapprove any such contract if he finds that it:

(a) subjects the insurer to excessive charges;

(b) is to extend for an unreasonable length of time;

(c) does not contain fair and adequate standards of performance; or

(d) contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

History: En. Sec. 441, Ch. 286, L. 1959; R.C.M. 1947, 40-4724.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-310. Agreement not to sell property prohibited. No insurer shall enter into any agreement to withhold from sale any of its property. Disposition of an insurer's property shall be at all times within the control of its board of directors.

History: En. Sec. 444, Ch. 286, L. 1959; R.C.M. 1947, 40-4727.

Part 4
Finance

Part Cross-References
Domestic insurers — taxation of real and personal property, Title 15, ch. 24, part 6.

33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or his duly constituted examiner.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state; and

(b) such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) below.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal or concealment of such records or assets or material part thereof from the commissioner is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

History: En. Sec. 442, Ch. 286, L. 1959; R.C.M. 1947, 40-4725; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 5, Ch. 798, L. 1991.

33-3-402. Vouchers for expenditures. (1) No insurer shall make any disbursement of $100 or more unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein.

(4) If a voucher cannot be obtained, the expenditure referred to in subsection (1) above shall be evidenced by an affidavit in which is set forth the character and object of the expenditure and the reasons for not obtaining a voucher therefor.

History: En. Sec. 443, Ch. 286, L. 1959; R.C.M. 1947, 40-4726.

33-3-403 through 33-3-410 reserved.

33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

History: En. Sec. 446, Ch. 286, L. 1959; R.C.M. 1947, 40-4729.

33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such

minimum amount of surplus, but such working funds so provided shall not exceed 5% of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment shall be computed on the basis of the premiums earned on such policy during the period to which the assessment relates.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

History: En. Sec. 447, Ch. 286, L. 1959; R.C.M. 1947, 40-4730.

33-3-413. Enforcement of contingent liability. (1) Any assessment made by an insurer under 33-3-412 or 33-3-433 shall be deemed to be prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer shall be deemed to be likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

History: En. Sec. 448, Ch. 286, L. 1959; R.C.M. 1947, 40-4731.

33-3-414. Nonassessable policies of mutual insurers. (1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

(3) No policy of a domestic mutual insurer which, pursuant to the commissioner's order, is without contingent liability and thereby nonassessable by its terms shall be subject to assessment for any debt or liability of the insurer.

History: En. Sec. 449, Ch. 286, L. 1959; R.C.M. 1947, 40-4732.

33-3-415. Insufficient reserves — nonassessable policies prohibited — revocation of authority. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder or renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability.

History: En. Sec. 450, Ch. 286, L. 1959; R.C.M. 1947, 40-4733.

33-3-416 through 33-3-420 reserved.

33-3-421. Participating policies. (1) If provided in its articles of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged. Any such domestic insurer which prior to January 1, 1961, has been issuing all or part of its policies on a participating basis without specific authorization in its articles of incorporation may continue to issue such policies on a basis not inconsistent with this section.

(2) After the third policy year no dividend otherwise earned shall be made contingent upon the payment of renewal premium on any policy.

History: En. Sec. 451, Ch. 286, L. 1959; R.C.M. 1947, 40-4734.

33-3-422. Dividends to stockholders. (1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under 33-3-431.

(3) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

History: En. Sec. 452, Ch. 286, L. 1959; R.C.M. 1947, 40-4735.

33-3-423. Dividends to mutual policyholders. (1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

History: En. Sec. 453, Ch. 286, L. 1959; R.C.M. 1947, 40-4736.

33-3-424. Illegal dividends — penalty. (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under 33-3-422 or 33-3-423 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

History: En. Sec. 454, Ch. 286, L. 1959; R.C.M. 1947, 40-4737.

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Misdemeanor — penalty, 46-18-212.

33-3-425 through 33-3-430 reserved.

33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest at a rate no greater than the rate established in 25-9-205, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets.

History: En. Sec. 455, Ch. 286, L. 1959; R.C.M. 1947, 40-4738; amd. Sec. 6, Ch. 798, L. 1991.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-432. Impairment of capital or assets. (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under 33-3-204 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under chapter 2, part 8, for the investment of the insurer's funds; if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient surplus under this code.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such 60-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 13; except that if such deficiency exists because of increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed.

History: En. Sec. 456, Ch. 286, L. 1959; R.C.M. 1947, 40-4739; amd. Sec. 12, Ch. 303, L. 1981; amd. Sec. 141, Ch. 575, L. 1981.

33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's notice mentioned in 33-3-432 (1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under 33-3-432, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) Neither this section nor 33-3-432 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

History: **En. Sec. 457, Ch. 286, L. 1959; R.C.M. 1947, 40-4740.**

33-3-434. Directors' liability for losses during deficiency. The directors of the insurer shall be individually liable as to losses incurred under policies issued by the insurer after expiration of the period provided in 33-3-432 for curing any deficiency of the insurer's capital stock or surplus and prior to the curing of the deficiency.

History: **En. Sec. 458, Ch. 286, L. 1959; R.C.M. 1947, 40-4741.**

33-3-435. Stock transfer during impairment of capital. Any transfer of the stock of a domestic insurer made during the existence of any impairment of such insurer's capital does not release the stockholder making the transfer from any liability as a stockholder of such insurer which accrued prior to such transfer.

History: **En. Sec. 459, Ch. 286, L. 1959; R.C.M. 1947, 40-4742.**

33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered or date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

History: **En. Sec. 466, Ch. 286, L. 1959; R.C.M. 1947, 40-4749.**

33-3-437 through 33-3-440 reserved.

33-3-441. Equity securities of domestic stock insurance company — statement of ownership. (1) When used in 33-3-441 through 33-3-447, the term "equity security" means any stock or similar security; any security convertible, with or without consideration, into such a security or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the

commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter.

(3) If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Secs. 1, 6, Ch. 159, L. 1965; R.C.M. 1947, 40-4751, 40-4756.

33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules. (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than 2 years after the date such profit was realized.

(3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions which the commissioner by rules may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965; R.C.M. 1947, 40-4752.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules, 33-1-313.

33-3-443. Short sales of equity securities prohibited — time for delivery after sale. (1) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(a) does not own the security sold; or

(b) if owning the security, does not deliver it against such sale within 20 days thereafter or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such

delivery or deposit within such time or that to do so would cause undue inconvenience or expense.

History: **En. Sec. 3, Ch. 159, L. 1965; R.C.M. 1947, 40-4753.**

33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules. (1) The provisions of 33-3-442 shall not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: **En. Sec. 4, Ch. 159, L. 1965; R.C.M. 1947, 40-4754.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-3-445. Exemptions — arbitrage transactions. The provisions of 33-3-441 through 33-3-443 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of 33-3-441 through 33-3-447.

History: **En. Sec. 5, Ch. 159, L. 1965; R.C.M. 1947, 40-4755.**

33-3-446. Exemptions — registered securities — holding by less than 100 persons. The provisions of 33-3-441 through 33-3-443 shall not apply to equity securities of a domestic stock insurance company if:

(1) such securities shall be registered or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(2) such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of 33-3-441 through 33-3-443 except for the provisions of this subsection (2).

History: **En. Sec. 7, Ch. 159, L. 1965; R.C.M. 1947, 40-4757.**

Cross-References

Securities regulation — registration, Title 30, ch. 10, part 2.

33-3-447. Rules of commissioner — classifications — effect. (1) The commissioner may make such rules as may be necessary for the execution of the functions vested in him by 33-3-441 through 33-3-446 and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction.

(2) No provision of 33-3-441 through 33-3-443 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of

the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965; R.C.M. 1947, 40-4758.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules, 33-1-313.

Part 5
Insurance Operations

33-3-501. Repealed. Sec. 29, Ch. 303, L. 1981.

History: En. Sec. 430, Ch. 286, L. 1959; R.C.M. 1947, 40-4713.

33-3-502. Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publication and radio, television, and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. It shall not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

History: En. Sec. 445, Ch. 286, L. 1959; R.C.M. 1947, 40-4728.

Cross-References

Hearings by Commissioner, 33-1-701.

Suspension or revocation of certificate of authority, 33-2-118.

33-3-503. Membership in mutuals. (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of such membership and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

(3) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

History: **En. Sec. 431, Ch. 286, L. 1959; R.C.M. 1947, 40-4714.**

Part 6
Dissolution and Liquidation

Part Cross-References

Supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

Dissolution and liquidation, Title 35, ch. 1, part 9.

33-3-601. Voluntary dissolution of domestic insurers — plan of dissolution. At least 60 days before an insurer submits a proposed voluntary dissolution to shareholders or policyholders under 35-1-932 or voluntarily dissolves under 35-1-931, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under 35-1-931 through 35-1-935, except that 35-1-938(4) does not apply. The papers required by 35-1-931 through 35-1-935 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-1-217 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under chapter 2, part 13, of this title.

History: **En. Sec. 2, Ch. 389, L. 1987; amd. Sec. 189, Ch. 368, L. 1991.**

33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under 35-1-931 and 35-1-932 apply to the commissioner to have the liquidation continued under his supervision; thereupon, the commissioner shall apply to the court for liquidation under 33-2-1341.

History: **En. Sec. 3, Ch. 389, L. 1987; amd. Sec. 190, Ch. 368, L. 1991.**

33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under 35-1-934, the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.

History: **En. Sec. 4, Ch. 389, L. 1987; amd. Sec. 191, Ch. 368, L. 1991.**

33-3-604. Distribution of assets of a mutual insurer. The maximum amount that a mutual insurer may pay to a policyholder upon dissolution, in addition to the benefits promised in the insurance policy, is the total of the premium payments made by the policyholder with interest at the legal rate compounded annually. Any excess over such amounts must be deposited with the state treasurer to the credit of the state general fund. A person may participate in the distribution of assets of a mutual insurer only if he has a policy in effect 180 days before the insurer files its plan for dissolution with the commissioner. The amount that a person eligible to participate in the distribution of assets of a mutual insurer may receive must be in the proportion that the premiums paid by the policyholder bear to the total premiums paid to the mutual insurer by all policyholders who had policies in effect 180 days before the insurer filed its plan for dissolution with the commissioner.

History: En. Sec. 5, Ch. 389, L. 1987.

CHAPTER 4

FARM MUTUAL INSURERS

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Part 1
General Provisions

33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) All insurers qualifying under subsection (1) may be referred to as "farm mutual insurers".

(3) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 13; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18.

History: En. Secs. 468, 520, Ch. 286, L. 1959; R.C.M. 1947, 40-4801, 40-4853; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 12, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in (4) inserted "33-2-112" in list of statutory references; and made minor changes in style.

Cross-References

Board of Hail Insurance — powers and duties, 2-15-3003; Title 80, ch. 2, part 2.

33-4-102. Definitions. (1) A "county" mutual insurer is an insurer authorized to insure only property located in the county wherein is located its principal office and in the counties in this state with boundaries contiguous with such principal office county.

(2) A "state" mutual insurer is an insurer authorized to insure property throughout the state.

(3) "Surplus" is the extent to which the value of an insurer's assets exceeds its liabilities.

History: En. Secs. 469, 481, Ch. 286, L. 1959; R.C.M. 1947, 40-4802, 40-4814.

33-4-103. Corporate powers in general. (1) An insurance corporation formed under this chapter or existing on January 1, 1961, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

(a) to have succession by its corporate name for the period stated in its articles;

(b) to sue and be sued in its corporate name;

(c) to adopt, use, and alter a corporate seal;

(d) to acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(e) to transact insurance;

(f) to conduct its affairs through its directors, officers, employees, insurance producers, and representatives thereunto duly authorized;

(g) to make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation, and government of its affairs and property, including but not limited to calling and holding of meetings of its directors or members, and to modify or amend such bylaws;

(h) to exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles;

(i) to dissolve and wind up or be dissolved and wound up in the manner provided by law.

History: En. Sec. 479, Ch. 286, L. 1959; R.C.M. 1947, 40-4812; amd. Sec. 1, Ch. 713, L. 1989.

Part 2

Formation

33-4-201. Eligible incorporators. (1) One hundred or more individuals residing in this state, each of whom is 18 years of age or more, who collectively own farm property as referred to in 33-4-501(1)(a) valued at not less than $500,000 which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than $5,000, may incorporate a state mutual insurer.

(2) Twenty-five or more individuals residing in this state, each of whom is 18 years or more of age, each of whom owns farm land or ranch land valued at $5,000 or more in the county wherein is to be located the principal office of the proposed insurer or in any county in this state contiguous with such

county, and who collectively own in such counties farm property referred to in 33-4-501(1)(a) valued at not less than $125,000 which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971; R.C.M. 1947, 40-4807.

33-4-202. Declaration of intention to incorporate — articles of incorporation — fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form such a corporation, which declaration shall be signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) proposed articles of incorporation executed in quadruplicate by three or more of the incorporators and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property.

(2) The articles of incorporation shall state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name shall contain the words "farm mutual" or "rural mutual" together with the name of the county wherein is to be located its principal place of business. The name shall not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which office must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether it intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of its existence, which may be perpetual;

(g) the number of its directors, which shall not be less than 5 or more than 11; also the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members and until their successors are elected and qualified;

(h) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of the property desired insured owned by each in the county or counties where the operations of the corporation are to be carried on.

(3) At the time of filing of the articles of incorporation as provided in subsection (1) above, the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit all such fees with the state treasurer to the credit of the general fund of this state.

History: En. Sec. 475, Ch. 286, L. 1959; R.C.M. 1947, 40-4808.

33-4-203. Approval of articles — commencement of corporate existence. (1) Upon receipt of proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, the attorney general shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse the commissioner's approval upon each set of the articles and forward four sets of articles to the incorporators. The incorporators shall file one of the sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles must be made a part of the corporation's records.

(4) The corporation has legal existence upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3), but it may not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505.

History: En. Sec. 476, Ch. 286, L. 1959; R.C.M. 1947, 40-4809; amd. Sec. 13, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in first sentence of (3), after "set of the articles", deleted "file one set in his office" and after "forward" substituted "four" for "the other three"; and made minor changes in style.

Cross-References

Secretary of State — fee for filing documents, 2-6-103.

County Clerk — filing fee, 7-4-2631.

33-4-204. Amendment of articles. A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting of members called for that purpose, amend its articles of incorporation to extend its corporate duration or in any particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. The amended articles of incorporation shall be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment shall be contained in the notice given of any such annual or special meeting.

History: En. Sec. 477, Ch. 286, L. 1959; R.C.M. 1947, 40-4810.

33-4-205. Certified copies of articles as evidence. A copy of the articles of incorporation of a farm mutual insurer and any amendments thereof filed pursuant to law and certified by the commissioner shall be received in all courts and other places as prima facie evidence of the facts therein stated and of the due incorporation of the insurer.

History: En. Sec. 478, Ch. 286, L. 1959; R.C.M. 1947, 40-4811.

Cross-References

Evidence — public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

33-4-206. Initial qualifications. When applying for an original certificate of authority as an insurer newly organized in this state, the insurer must have surplus as required by 33-4-401, be otherwise qualified therefor under this code, and:

(1) if a county mutual insurer, it must have received acceptable bona fide written applications from 25 separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least $100,000. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(2) if a state mutual insurer, it must have received acceptable bona fide written applications from 100 separate persons, each for substantial insurance, aggregating at least $500,000 of the kinds of insurance proposed to be transacted. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(3) if to insure growing crops against loss or damage by hail, it must have received applications for such hail insurance from not less than 100 persons resident in Montana owning in the aggregate not less than 5,000 acres of grain. Each such applicant must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact insurance.

History: En. Sec. 480, Ch. 286, L. 1959; R.C.M. 1947, 40-4813.

Cross-References

State hail insurance, 2-15-3003; Title 80, ch. 2, part 2.

Certificate of authority, 33-4-505.

Part 3

Management

33-4-301. Bylaws — adoption — power to amend. Upon commencement of the legal existence of an insurer, its initial board of directors shall adopt such original bylaws, not inconsistent with the state constitution or this chapter, as may be deemed necessary for the management of its affairs. The bylaws shall be subject to the approval of the insurer's members at their next succeeding meeting. The members shall otherwise have the power to make, modify, and revoke bylaws.

History: En. Sec. 484, Ch. 286, L. 1959; R.C.M. 1947, 40-4817.

33-4-302. Bylaws — contents. (1) The bylaws of a farm mutual insurer shall provide:

(a) as to the liability of each member for payment of the expenses and losses of the insurer and what obligations shall be given therefor when a person applies for insurance;

(b) as to the time when obligations of members for losses and expenses become due;

(c) for limitation of liability of members for the payment of expenses and losses of the insurer;

(d) the terms of office of the directors. At least part of the directors shall be elected at each annual meeting of members. The term of any director shall not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member shall be permitted to cast at least one vote, either in person or, if so authorized in the bylaws, by proxy, for each director to be elected and may cumulate his votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case no election occurs at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) above;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) as to who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what shall be contained on the corporate seal and when the seal shall be required to be used;

(l) such other matters as may be deemed necessary or convenient for the management of the affairs of the insurer.

History: En. Sec. 485, Ch. 286, L. 1959; R.C.M. 1947, 40-4818.

33-4-303. Bylaws binding upon members. The bylaws of a farm mutual insurer are binding upon all of its members and as from time to time amended are a part of the contracts of insurance between the insurer and its members.

History: En. Sec. 486, Ch. 286, L. 1959; R.C.M. 1947, 40-4819.

33-4-304. Annual meetings of members — where held. Annual meetings of the members of a farm mutual insurer may be held at its principal business office or at any other place located in any county in this state in which the insurer is authorized to transact insurance.

History: En. Sec. 488, Ch. 286, L. 1959; R.C.M. 1947, 40-4821.

33-4-305. Annual meeting — presentation of annual statement. The annual statement of the insurer as required to be filed with the commissioner under 33-4-313 shall be presented at the annual meeting of the members of the insurer next following the end of the calendar year to which such statement relates.

History: En. Sec. 489, Ch. 286, L. 1959; R.C.M. 1947, 40-4822.

33-4-306. Adjourned annual meetings — notice. Notice of any adjourned annual meeting of members shall be given to the members of an insurer in the same manner as provided in the insurer's bylaws for the regular annual meeting of members.

History: En. Sec. 490, Ch. 286, L. 1959; R.C.M. 1947, 40-4823.

33-4-307. Members' voting rights. Each member of an insurer is entitled to one vote upon each matter coming to a vote at meetings of members of the insurer. A member may vote by written proxy if and as may be provided in the insurer's bylaws. No such proxy shall be made irrevocable or for longer than 1 year.

History: En. Sec. 491, Ch. 186, L. 1959; R.C.M. 1947, 40-4824.

33-4-308. Board of directors — quorum. (1) The general management of the affairs of a farm mutual insurer is vested in its board of directors.

(2) A majority of the directors shall constitute a quorum to do business at any lawful meeting of the board.

History: En. Sec. 494, Ch. 286, L. 1959; R.C.M. 1947, 40-4827.

33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer shall be elected by its members by ballot for terms not to exceed 3 years and shall hold office until their respective successors are elected and have qualified.

(2) No individual shall serve as a director unless a member of the insurer.

History: En. Sec. 495, Ch. 286, L. 1959; R.C.M. 1947, 40-4828.

33-4-310. Officers. The board of directors of an insurer shall elect from their number a president and vice-president. The board shall also elect a secretary and treasurer or a secretary-treasurer, who may or may not be members of the insurer. Officers shall hold their offices for 1 year and until their successors are elected and qualified, unless earlier removed by the board of directors.

History: En. Sec. 496, Ch. 286, L. 1959; R.C.M. 1947, 40-4829.

33-4-311. Bonds of officers. The treasurer and secretary of an insurer shall each give bonds to the insurer for the faithful performance of their duties, in such amount as is designated by the board of directors. Any such bond shall be one issued by an authorized corporate surety.

History: En. Sec. 497, Ch. 286, L. 1959; R.C.M. 1947, 40-4830.

Cross-References

Surety bonds, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-4-312. Officers, insurance producers, and employees not licensed — exception for liability insurance. (1) Except as provided in subsection (2), no insurance producer of an insurer is required to obtain a license or authority from any public official to transact business for such insurer, nor is the insurer or any of its officers, insurance producers, or employees required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.

(2) A farm mutual insurer that offers liability insurance is required to have an insurance producer licensed by the state of Montana to transact liability insurance, and no person may offer, solicit, take applications for, procure, or place for others liability insurance by a farm mutual insurer unless he or she is licensed under Title 33, chapter 17.

History: En. Sec. 498, Ch. 286, L. 1959; R.C.M. 1947, 40-4831; amd. Sec. 1, Ch. 28, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-4-313. Annual statement — report — filing. (1) The president and secretary of every insurer, on or before March 1 each year, shall prepare, affirm under oath, affix the corporate seal thereto, and file with the commissioner, on forms as prescribed and furnished by him, an annual statement for the preceding calendar year showing the condition of such insurer as of December 31 of such year and exhibiting the following facts:

(a) the names of the president and secretary;

(b) the date of the annual meeting;

(c) the amount of insurance in force;

(d) the number of members;

(e) the number of assessments made during the year;

(f) the amount paid in losses during the year;

(g) the amount of the losses claimed and not paid, with the reason for nonpayment;

(h) the number of members withdrawn, suspended, and expelled during the year;

(i) the number of new members admitted during the year;

(j) the expenses during the year;

(k) the amount of money on hand;

(l) the amount and character of the insurer's assets;

(m) the amount of the insurer's liabilities, including any reserves required to be established under this chapter;

(n) such other information concerning the insurer's affairs as the commissioner may reasonably require.

(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404.

History: En. Sec. 499, Ch. 286, L. 1959; R.C.M. 1947, 40-4832; amd. Sec. 1, Ch. 337, L. 1987.

33-4-314. Annual statement — exclusive report — penalty for failure to file. (1) No report, statement, or return of any nature shall be required of any farm mutual insurer other than those required by 33-4-313.

(2) The commissioner may suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required.

History: En. Sec. 500, Ch. 286, L. 1959; R.C.M. 1947, 40-4833.

Cross-References

Certificate of authority, 33-4-505.

33-4-315. Examination by commissioner — expense. (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

(2) The insurer shall pay the costs of investigation and examination by the commissioner in the same manner as prescribed in 33-1-413.

History: En. Sec. 501, Ch. 286, L. 1959; R.C.M. 1947, 40-4834; amd. Sec. 1, Ch. 177, L. 1987.

33-4-316. Records — inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer shall be located at its principal place of business or, in the case of a county mutual insurer, at such place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer shall be available for inspection by the insurer's directors and officers and by the commissioner or his duly constituted examiner at all reasonable times.

History: En. Sec. 508, Ch. 286, L. 1959; R.C.M. 1947, 40-4841.

Part 4

Finance

33-4-401. Surplus funds required. A domestic farm mutual insurer may hereafter be authorized to transact insurance if otherwise in compliance with the applicable provisions of this chapter, if it has and thereafter maintains surplus funds as follows:

(1) if a state mutual insurer, surplus of not less than $100,000;

(2) if a county mutual insurer, surplus of not less than $20,000; or

(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.

History: En. Sec. 482, Ch. 286, L. 1959; R.C.M. 1947, 40-4815.

33-4-402. Members' liability — limitation. All liability of the members of a farm mutual insurer shall be as limited in the insurer's bylaws. As to insurers transacting business on the cash premium plan, the limitation shall comply with 33-4-504(4). No member shall be required to pay more than the full amount of his obligation given to the insurer or of his liability as provided for in the bylaws.

History: En. Sec. 492, Ch. 286, L. 1959; R.C.M. 1947, 40-4825.

33-4-403. Investments. (1) When directed by a majority vote of its members present at a meeting of members, the directors of a farm mutual insurer may invest the insurer's funds or any part of the funds in any of the following:

(a) bonds or other securities issued by the United States government or by any agency of the United States;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency of the United States;

(c) general obligation bonds or warrants of any state, county, or city, when approved by the commissioner;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3);

(e) common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers for the purpose of offering companion insurance products that farm mutual insurers are prohibited from selling. The investment may not exceed one-third of the assets of the farm mutual insurer.

(f) corporate bonds that are rated A3 or better by Moody's investor service, inc., or A- or better by Standard and Poor's corporation and that are issued with the full credit of the parent corporation. An investment in corporate bonds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested with one corporation.

(g) money market funds as defined by rules adopted by the commissioner. An investment in money market funds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested in a single money market fund.

(2) At the time of making an investment the document evidencing the investment must be stamped with the name of the insurer with the following notation printed or written on the document: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) A real estate loan may not be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. The loan may not be for a term longer than 10 years. This subsection does not prevent the renewal or extension of loans already made and does not apply to real estate loans that are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans that are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of the loans. This subsection does not prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith. This subsection does not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors the

subsequent liens are necessary to further secure the payment of any debts and save the insurer from loss.

History: En. Sec. 502, Ch. 286, L. 1959; R.C.M. 1947, 40-4835; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 145, Ch. 575, L. 1981; amd. Exec. Ord. No. 16-81; amd. Sec. 1, Ch. 77, L. 1983; amd. Sec. 1, Ch. 334, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 334 in (1)(c) substituted "approved by the commissioner" for "recommended by the commissioner and approved by the department of commerce"; inserted (1)(f) allowing investment in corporate bonds; inserted (1)(g) allowing investment in money market funds; and made minor changes in style.

Cross-References

Restrictive endorsements — negotiable instruments, 30-3-205.

33-4-404. Expenditure of funds for educational purposes. An insurer may spend in any one year up to 5% of its net earnings of the preceding year for educational purposes. A complete and itemized report of such expenditures shall be filed by the insurer as part of its annual report required under 33-4-313.

History: En. Sec. 503, Ch. 286, L. 1959; R.C.M. 1947, 40-4836.

33-4-405. Safety fund. (1) Any domestic farm mutual insurer may create a safety fund, in addition to any surplus required under 33-4-401 or reserve otherwise required, for the purpose of paying insured losses or lawful expenses or obligations of the insurer as they are incurred.

(2) The safety fund shall not exceed in amount 3% of the total amount of insurance in force in the insurer.

(3) The safety fund shall not be used for any purpose except as specified in subsection (1) above.

History: En. Sec. 504, Ch. 286, L. 1959; R.C.M. 1947, 40-4837.

33-4-406. Reserves — cash premium plan. Each insurer transacting business on the cash premium plan shall maintain the following reserves:

(1) a loss reserve, in amount reasonably adequate to pay in full all losses already incurred but currently unpaid. The amount subsequently paid on such losses shall be credited against this reserve.

(2) a reserve for unearned premiums, which reserve shall be computed at 50% of net premiums (gross premiums less premiums returned) charged and collected for unexpired policy periods that commenced during the calendar year covered by the financial statement plus 100% of such net premiums charged and collected in advance for policy periods that are to commence after such calendar year. In the alternative, the insurer may at its option compute its entire reserve for unearned premiums as the aggregate amount of the pro rata unearned premiums for each policy in force as at the end of the calendar year to be covered by the financial statement.

History: En. Sec. 505, Ch. 286, L. 1959; R.C.M. 1947, 40-4838.

33-4-407. Profits or dividends. No insurer shall accumulate any profits as such or pay any dividends. This provision shall not be deemed to prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by it under this chapter or a safety fund as authorized under 33-4-405 or from accumulating and maintaining other voluntary reserves for such purposes and in such amounts as may be reasonable. Limitations upon any such accumulations and the purposes thereof may be provided for in the insurer's bylaws.

History: En. Sec. 506, Ch. 286, L. 1959; R.C.M. 1947, 40-4839.

33-4-408. Deficiency of surplus. (1) If the surplus funds of a farm mutual insurer at any time fall below the amount required to be maintained under this chapter, the insurer shall cure such deficiency within 6 months thereafter, notwithstanding that new losses or expenses may be incurred within such 6-month period.

(2) If the deficiency is not so cured, the commissioner may, upon the insurer's written application therefor, allow an additional reasonable period, not to exceed 6 months, for the curing of the deficiency.

(3) If the deficiency is not so cured within the first 6-month period, if additional time is not so applied for, or within such additional period as the commissioner may so allow, the commissioner shall forthwith suspend or revoke the insurer's certificate of authority.

History: En. Sec. 507, Ch. 286, L. 1959; R.C.M. 1947, 40-4840.

Cross-References

Certificate of authority, 33-4-505.

33-4-409. Fees and taxes. Except for the fees for filing articles of incorporation as provided in 33-4-202 and 33-4-203, for issuance and continuance of certificate of authority as provided in 33-4-505, and for costs of examination by the commissioner as provided in 33-4-315(2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer.

History: En. Sec. 509, Ch. 286, L. 1959; R.C.M. 1947, 40-4842; amd. Sec. 2, Ch. 177, L. 1987; amd. Sec. 1, Ch. 327, L. 1987.

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-4-410. Losses — notice — adjustment. (1) Every member of a domestic farm mutual insurer who has sustained any insured loss or damage shall immediately notify the insurer's secretary thereof and of the amount of damage or loss claimed.

(2) Upon receipt of the notice of loss referred to in subsection (1) above, the secretary shall notify the person or persons authorized by the bylaws of such insurer to ascertain the amount of the loss or damage and adjust the same.

History: En. Sec. 514, Ch. 286, L. 1959; R.C.M. 1947, 40-4847.

33-4-411. Arbitration — committee — compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if so provided for in the insurer's bylaws, the matter shall be submitted to three persons as a committee of reference, one of whom shall be selected by the claimant, one by the insurer, and the third by such two persons, all of whom shall be sworn to a faithful and impartial investigation and award.

(2) The committee of reference shall have authority to examine witnesses and determine all matters in dispute. The decision or award of the committee

shall be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award shall not be made until after maturity of such crop. The decision or award of the committee shall be final and binding upon all parties, unless an interested party appeals to the court within 30 days thereafter.

(3) The compensation of each member of any such committee shall be at the rate of $10 per day for each day of service in the discharge of his duties. Such compensation shall be paid by the claimant, unless the award of the committee exceeds the sum theretofore offered by the insurer in settlement of the claim and in which case the compensation shall be paid by the insurer.

History: En. Sec. 515, Ch. 286, L. 1959; R.C.M. 1947, 40-4848.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

33-4-412. Obligations or assessments due — losses payable. (1) Obligations or assessments of members for losses and expenses become due and payable at such time as may be provided in the bylaws of the insurer, and the insurer shall use due diligence to collect each obligation or assessment.

(2) Any valid claim for an insured loss against an insurer transacting business on the assessment plan shall not be payable by the insurer until 30 days after such obligations of the members are due and payable.

History: En. Sec. 516, Ch. 286, L. 1959; R.C.M. 1947, 40-4849.

33-4-413. Suit to collect obligations — liability of directors or officers. (1) An insurer may institute a suit against any member of such insurer if the member fails to pay when due any obligation or liability of the member given such insurer under the provisions of this chapter.

(2) The directors or officers of an insurer are liable in their individual capacity to the person sustaining an insured loss if they willfully refuse or neglect to perform the duties imposed upon them by the provisions of this section.

History: En. Sec. 517, Ch. 286, L. 1959; R.C.M. 1947, 40-4850.

33-4-414. Proportionate payment of losses. If the aggregate whole amount of the members' obligations to an insurer transacting business on the assessment plan are insufficient to pay all valid claims for losses under the insurer's contracts of insurance after necessary expenses in any one year, then such claimants insured by the insurer shall receive their proportionate share of the funds realized from such obligations in full satisfaction of such losses.

History: En. Sec. 518, Ch. 286, L. 1959; R.C.M. 1947, 40-4851.

33-4-415. Suit to collect for loss. If the insurer fails to pay any insured loss when due, an action may be maintained against it to collect for such loss, but subject to 33-4-414 as to assessment plan insurers.

History: En. Sec. 519, Ch. 286, L. 1959; R.C.M. 1947, 40-4852.

Part 5

Insurance Operations

33-4-501. Insuring powers in general. (1) In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) rural dwellings and buildings, including the usual contents, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of the insurer or by the member's spouse;

(b) residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or by the member's spouse and located outside the boundaries of an incorporated city or town;

(c) dwellings and related buildings designed for occupancy by not over two families, together with the usual contents, situated in an incorporated city or town if the property is owned by a member of the insurer or by the member's spouse and if the member has other insurance of rural property with the insurer;

(d) rural schoolhouses and buildings used in connection with the schoolhouse, rural community houses, rural churches, or other rural public buildings.

(2) A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b) only to the extent of the limit of risks provided in 33-4-502(3) and only if every policy bears on its face in boldface type a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.

(3) Except as provided in subsection (1)(c), an insurer may not insure any property not owned by a member or by the member's spouse.

(4) An insurer may not insure any property situated within the limits of incorporated towns or cities except as provided in subsection (1)(c) and may not insure the property unless it has and maintains the surplus funds as required under 33-4-401.

History: En. Sec. 470, Ch. 286, L. 1959; R.C.M. 1947, 40-4803; amd. Sec. 2, Ch. 28, L. 1987; amd. Sec. 2, Ch. 334, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 334 in (1)(a), at beginning, substituted "rural" for "farm"; inserted (1)(b) relating to residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or a member's spouse; in (1)(c), at beginning after "dwellings", inserted "and related buildings" and at end substituted "rural property with the insurer" for "farm property with the insurer for a substantial amount"; in (4) substituted "subsection (1)(c)" for "subsection (1)(b)"; and made minor changes in style.

33-4-502. Limit of risk — retention of liability. (1) Except as provided in subsection (3), the maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, may not exceed 10% of the admitted assets of the insurer or $50,000, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least $50,000;

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer authorized to do business in this state, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and

(c) may not retain liability risk greater than the proportional share of each limit of liability in the following schedule:

Surplus as of the Preceding December 31:	Proportional Share of Each Limit of Liability Retained:
$1,000,000 or greater	15%
$800,000 to $999,999	12%
$600,000 to $799,999	9%
$400,000 to $599,999	6%
$200,000 to $399,999	3%
Under $200,000	0

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967; amd. Sec. 1, Ch. 94, L. 1975; R.C.M. 1947, 40-4804; amd. Sec. 1, Ch. 319, L. 1979; amd. Sec. 1, Ch. 132, L. 1981; amd. Sec. 3, Ch. 28, L. 1987.

33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and may accept reinsurance from other farm mutual insurers.

History: En. Sec. 472, Ch. 286, L. 1959; R.C.M. 1947, 40-4805.

Cross-References

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on the cash premium plan altogether or on the assessment plan altogether, whichever plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems will be adequate to cover losses and expenses incurred during the term of such insurance.

(3) If transacting business on the assessment plan, the insurer will depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred. This provision shall not be construed, however, as preventing any such insurer from collecting from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance; nor shall it be deemed to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event the cash premium charged is found by it to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall provide a specific limitation as to the amount which can be so assessed in any one policy year, such amount to be not less than one or more than six times the

premium charged on each member's policy at the annual rate for a term of 1 year.

History: En. Sec. 473, Ch. 286, L. 1959; R.C.M. 1947, 40-4806.

33-4-505. Certificate of authority required — issuance — continuation — fee. (1) A farm mutual insurer may not insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application therefor the commissioner shall issue such a certificate of authority to every insurer qualified therefor under this chapter.

(3) Every such certificate of authority continues in force as long as the farm mutual insurer is entitled thereto under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the farm mutual insurer each year by payment before May 15 of the continuation fee of $10 if a county mutual insurer or $25 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(4) If the farm mutual insurer does not continue its certificate of authority in accordance with subsection (3), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a farm mutual insurer that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(5) A certificate of authority is subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to herein.

(6) The commissioner may in his discretion reinstate a certificate of authority that a farm mutual insurer has inadvertently permitted to expire, after the farm mutual insurer has fully cured all failures that resulted in the expiration and upon payment by the farm mutual insurer of the fee for reinstatement as provided in 33-2-708 in addition to the current continuation fee as provided in subsection (3). If a certificate is not reinstated, the commissioner may grant a farm mutual insurer another certificate of authority only after the farm mutual insurer files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(7) The commissioner may amend a certificate of authority at any time to accord with changes in the farm mutual insurer's charter of insuring powers.

History: En. Sec. 483, Ch. 286, L. 1959; R.C.M. 1947, 40-4816; amd. Sec. 2, Ch. 327, L. 1987.

Cross-References

Contested case administrative hearings, 2-4-102.

33-4-506. Members — minimum membership. (1) No person may become a member of a farm mutual insurer except by insuring therein property owned by him so insurable under this chapter.

(2) The membership of such an insurer shall consist of the persons lawfully insuring therein.

(3) The total membership of the insurer shall at all times be not less than the number of persons required by 33-4-201 to incorporate such an insurer.

History: En. Sec. 487, Ch. 286, L. 1959; R.C.M. 1947, 40-4820.

33-4-507. Withdrawal of member — cancellation by insurer. (1) Any member of an insurer may withdraw therefrom by surrendering his policy to the insurer for cancellation and paying all obligations then owing by him to the insurer.

(2) The insurer has power to cancel the policy of any member for any cause deemed adequate by the insurer and upon not less than 10 days' written notice in advance of cancellation delivered to the member or mailed to his address last of record with the insurer.

History: En. Sec. 493, Ch. 286, L. 1959; R.C.M. 1947, 40-4826.

33-4-508. Application for insurance. All persons desiring insurance shall make written application therefor to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make such advance payment in cash as insurer may require.

History: En. Sec. 510, Ch. 286, L. 1959; R.C.M. 1947, 40-4843.

33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer shall be filed with the commissioner at least 30 days in advance of any such use. The commissioner shall disapprove any such form found by him to be unlawful, illegible, or misleading. An insurer shall not use any such form after it has received the commissioner's notice of disapproval setting forth the reasons therefor.

History: En. Sec. 511, Ch. 286, L. 1959; R.C.M. 1947, 40-4844.

Cross-References

Contested case administrative proceedings, 2-4-102.

33-4-510. Rates — filing — discrimination. (1) A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects of insurance covered for like perils under like policies and having substantially the same insuring, exposure, and underwriting characteristics.

(2) Notwithstanding any provision of subsection (1) or chapter 18, part 2, of this title, a farm mutual insurer transacting insurance under this chapter may refuse to renew a casualty or liability policy upon nonpayment of dues to the farm mutual insurer if payment of dues is a condition for obtaining or continuing such insurance.

History: En. Sec. 512, Ch. 286, L. 1959; R.C.M. 1947, 40-4845; amd. Sec. 1, Ch. 319, L. 1981.

33-4-511. Insurance of schools, community houses, and churches. (1) No contract of insurance effected upon the property of any school district, rural community house, rural church, or rural public building pursuant to 33-4-501 shall be deemed to constitute such school district or the owners of any such community house, church, or public building a member of the insurer.

(2) No contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in

33-4-501(1)(c) shall be invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a trustee, director, insurance producer, custodian, or manager or in any way in control, supervision, or management of any or all of the property so insured.

History: En. Sec. 513, Ch. 286, L. 1959; R.C.M. 1947, 40-4846; amd. Sec. 1, Ch. 713, L. 1989.

CHAPTER 5

RECIPROCAL INSURERS

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Part 1
General Provisions

33-5-101. Scope of chapter — existing insurers. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after January 1, 1961, comply with the provisions of this chapter and shall make such amendments to their subscribers' agreement, power of attorney, policies, and other documents and accounts and perform such other acts as may be required for such compliance.

History: En. Sec. 540, Ch. 286, L. 1959; R.C.M. 1947, 40-5003.

33-5-102. Definitions. (1) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an attorney-in-fact common to all such persons.

(2) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves.

History: En. Secs. 538, 539, Ch. 286, L. 1959; R.C.M. 1947, 40-5001, 40-5002.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

33-5-103. Name — suits. A reciprocal insurer shall:

(1) have and use a business name. The name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting".

(2) sue and be sued in its own name.

History: En. Sec. 542, Ch. 286, L. 1959; R.C.M. 1947, 40-5005.

33-5-104. Attorney — not doing business. (1) "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

History: En. Sec. 543, Ch. 286, L. 1959; R.C.M. 1947, 40-5006.

Part 2
Formation

33-5-201. Organization of reciprocal insurer. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

History: En. Sec. 545, Ch. 286, L. 1959; R.C.M. 1947, 40-5008; amd. Sec. 15, Ch. 198, L. 1979.

Cross-References

Certificate of authority, 33-5-502.

33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise such right.

History: En. Sec. 564, Ch. 286, L. 1959; R.C.M. 1947, 40-5027.

Cross-References

Contested case administrative proceedings, 2-4-102.

Hearings by Commissioner, 33-1-313.

Part 3
Management

33-5-301. Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) the powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) the general services to be performed by the attorney;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses to be paid by the insurer; and

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 1 or more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective as to a domestic reciprocal insurer until approved by the commissioner.

History: En. Sec. 547, Ch. 286, L. 1959; R.C.M. 1947, 40-5010.

Cross-References

Power of attorney — agency generally, Title 28, ch. 10.

33-5-302. Modifications. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively or as to any insurance contract issued prior thereto.

History: En. Sec. 548, Ch. 286, L. 1959; R.C.M. 1947, 40-5011.

33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands and that he will not withdraw or appropriate to his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

History: En. Sec. 549, Ch. 286, L. 1959; R.C.M. 1947, 40-5012.

Cross-References

Surety bonds, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-5-304. Action on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

History: En. Sec. 550, Ch. 286, L. 1959; R.C.M. 1947, 40-5013.

33-5-305. Subscribers' advisory committee — duties. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) have such additional powers and functions as may be conferred by the subscribers' agreement.

History: En. Sec. 555, Ch. 286, L. 1959; R.C.M. 1947. 40-5018.

Part 4

Finance

33-5-401. Surplus funds required. (1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than $400,000;

(b) to transact casualty insurance, other than workers' compensation, surplus funds of not less than $400,000.

(2) In addition to surplus required to be maintained under subsection (1) above, the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

History: En. Sec. 544, Ch. 286, L. 1959; R.C.M. 1947, 40-5007; amd. Sec. 1, Ch. 307, L. 1979.

Cross-References

Casualty insurance — definition, 33-1-206.

Property insurance — definition, 33-1-210.

33-5-402. Contributions to insurer. The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given.

History: En. Sec. 552, Ch. 286, L. 1959; R.C.M. 1947, 40-5015.

33-5-403. Financial condition — method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than 90 days shall be allowed as assets.

(5) An assessment levied upon subscribers and not collected shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

History: En. Sec. 553, Ch. 286, L. 1959; R.C.M. 1947, 40-5016.

33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint.

(2) Except as to a nonassessable policy each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and

expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

History: **En. Sec. 556, Ch. 286, L. 1959; R.C.M. 1947, 40-5019.**

33-5-405. Subscribers' liability on judgment. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

History: **En. Sec. 557, Ch. 286, L. 1959; R.C.M. 1947, 40-5020.**

33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as stated in accordance with 33-5-404, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable.

History: **En. Sec. 558, Ch. 286, L. 1959; R.C.M. 1947, 40-5021.**

33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while his policy is in force or within 1 year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his policy is in force or within 1 year after its termination.

History: **En. Sec. 559, Ch. 286, L. 1959; R.C.M. 1947, 40-5022.**

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-408. Aggregate liability. No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

History: En. Sec. 560, Ch. 286, L. 1959; R.C.M. 1947, 40-5023.

33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

History: En. Sec. 561, Ch. 286, L. 1959; R.C.M. 1947, 40-5024.

Cross-References

Contested case administrative hearings, 2-4-102.

Hearings by Commissioner, 33-1-313.

33-5-410. Distribution of savings. A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks or policies or between subscribers, but this shall not prevent retrospective rating, distribution on a retrospective plan, or distribution varying as to classes of subscribers based on the experience of such subscribers.

History: En. Sec. 562, Ch. 286, L. 1959; R.C.M. 1947, 40-5025.

33-5-411. Subscribers' share in assets. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in 33-5-402, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

History: En. Sec. 563, Ch. 286, L. 1959; R.C.M. 1947, 40-5026.

33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscriber for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation.

History: En. Sec. 565, Ch. 286, L. 1959; R.C.M. 1947, 40-5028.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-413. Annual statement. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

History: En. Sec. 551, Ch. 286, L. 1959; R.C.M. 1947, 40-5014.

Part 5

Insurance Operations

33-5-501. Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact.

History: En. Sec. 541, Ch. 286, L. 1959; R.C.M. 1947, 40-5004.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-5-502. Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

History: **En. Sec. 546, Ch. 286, L. 1959; R.C.M. 1947, 40-5009.**

Cross-References

Revocation or suspension of certificates of authority — generally, 33-2-118, 33-2-119.

33-5-503. Eligible subscribers — liability of representative. (1) Individuals, partnerships, and corporations of this state may make application, enter into agreement for, hold policies or contracts in or with, and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations.

(2) Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships, and corporations to the same extent that individuals, partnerships, and corporations are herein authorized to exchange reciprocal interinsurance contracts.

(3) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

History: **En. Sec. 554, Ch. 286, L. 1959; R.C.M. 1947, 40-5017.**

CHAPTER 6

BENEVOLENT ASSOCIATIONS

Part 1 — General Provisions

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33-6-401. Continuous certificate of authority — fee — evidence.
33-6-402. Insurance producers — license.
33-6-403. Officers as insurance producers.
33-6-404. Minimum membership.

33-6-405. Payment of death claims.

Part 1
General Provisions

33-6-101. Scope of chapter — provisions applicable. (1) This chapter applies only to benevolent associations.

(2) No provisions of this code shall apply to any such association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, and 7 of chapter 1; 33-1-601 through 33-1-603; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; 33-2-804; chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; chapter 15; chapter 18; 33-22-304; and 33-22-506.

History: (1), (2)En. Sec. 521, Ch. 286, L. 1959; Sec. 40-4901, R.C.M. 1947; (3)En. Sec. 537, Ch. 286, L. 1959; amd. Sec. 1, Ch. 297, L. 1971; Sec. 40-4917, R.C.M. 1947; R.C.M. 1947, 40-4901, 40-4917; amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-6-102. Definitions. (1) (a) Any corporation, association, or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members whereby, upon decease of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such corporation, association, or society to his legal representatives or to the beneficiary designated by him, which money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of them collected or to be collected from the members thereof or members of a class therein or interest or accretions thereon or accumulations thereof; and wherein the money or other benefit, charity, aid, or relief so realized is applied to or accumulated for the uses and purposes herein specified and/or the uses of such corporation, association, or society and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(b) The definition of benevolent association in subsection (1)(a) above is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (i) above; or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) A "member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members, whereby any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such association upon the decease of a member to his legal representatives or to the beneficiary or beneficiaries designated by him.

(b) There shall be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business thereof, whether designated as officers, trustees, comptrollers, managers, or by whatever name called.

History: (1)En. Sec. 522, Ch. 286, L. 1959; amd. Sec. 20, Ch. 535, L. 1975; Sec. 40-4902, R.C.M. 1947; (2) thru (4)En. Secs. 523, 524, 525, Ch. 286, L. 1959; Secs. 40-4903, 40-4904, 40-4905, R.C.M. 1947; R.C.M. 1947, 40-4902, 40-4903, 40-4904, 40-4905.

33-6-103. New benevolent associations prohibited — foreign associations. (1) No benevolent association shall transact or be authorized to transact any business in this state unless it lawfully had authority to transact such business as such an association immediately prior to January 1, 1961.

(2) No new benevolent association shall hereafter be organized or formed in this state.

(3) No association formed or existing under the laws of any other state or jurisdiction shall be authorized to transact business in this state.

History: En. Sec. 526, Ch. 286, L. 1959; R.C.M. 1947, 40-4906.

33-6-104. Amendments filed with commissioner. Each benevolent association shall promptly file with the commissioner a copy, certified to by its president and secretary, of each of the following:

(1) if incorporated, any amendment of articles of incorporation or of bylaws;

(2) if not incorporated, any amendment of articles of association, of agreement, or of rules or agreements with its members;

(3) any modification of its form of membership contracts.

History: En. Sec. 527, Ch. 286, L. 1959; R.C.M. 1947, 40-4907.

Part 2

Management

33-6-201. Officers — number — bond. (1) Each benevolent association shall be in the charge of its officers and shall not have more than five officers.

(2) The treasurer and any other officer having charge of any funds of a benevolent association shall each be bonded in the amount of $1,000, executed to the state of Montana, joint and several, for the use and benefit of the members or beneficiaries of such association. Each such bond shall be on file in the principal office and address of the association, and a certified copy thereof must be filed with the commissioner.

History: En. Sec. 528, Ch. 286, L. 1959; R.C.M. 1947, 40-4908.

Cross-References

Surety bonds — general provisions, Title 28, ch. 11, part 4; Title 33, ch. 26.

Part 3
Finance

33-6-301. Receipts for payment to association. Every benevolent association shall issue a receipt or other evidence of payment to each person making a payment of any kind to the association.

History: En. Sec. 531, Ch. 286, L. 1959; R.C.M. 1947, 40-4911.

33-6-302. Expenses — assessment for expenses — shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) 20% of the total amount received during such year, whether as assessments, dues, donations, or by whatever name called, except fees collected for new memberships; or

(b) $15 per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed $3 per calendar year, except that such assessment shall not exceed $4 per year where a membership certificate includes within its protection a family group consisting of two or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods or a combination of such methods.

History: En. Sec. 533, Ch. 286, L. 1959; amd. Sec. 1, Ch. 224, L. 1975; R.C.M. 1947, 40-4913.

33-6-303. Assessment for death benefit — notice — procedure. (1) Within 30 days after a benevolent association receives a completed proof of claim for death of a member, it must mail to each of its members in good standing an assessment notice stating:

(a) the name, date, and place of death of the deceased member;

(b) the number of the proof of death claim assigned thereto by the association;

(c) the amount of the assessment and the expiration date of the assessment payment; and

(d) the number of members in good standing to whom such notices are being sent, as computed from the last completed assessment.

(2) At the time of mailing the assessment notice required by (1) above, the association shall send a duplicate thereof to the commissioner for filing, together with information as to the mailing of the notice to members.

History: En. Sec. 535, Ch. 286, L. 1959; R.C.M. 1947, 40-4915.

33-6-304. Annual statement. (1) In addition to compliance with 33-2-701, the annual statement of a benevolent association shall exhibit the following items and facts:

(a) the name and business address of the association;

(b) the names and addresses of the officers of the association;

(c) the number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each subgroup or class, if any, of the association.

(d) the number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied, or resisted, and reasons therefor;

(e) the number of assessments in the association and in each subgroup or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members;

(f) the expenses actually incurred during the year; debts unpaid at the commencement of the year; debts and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense, and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association;

(g) whether the association has complied with all of the provisions of 33-6-302 and 33-6-405;

(h) the information required by 33-6-302.

(2) Two officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement.

History: En. Sec. 536, Ch. 286, L. 1959; R.C.M. 1947, 40-4916; amd. Sec. 2, Ch. 337, L. 1987.

Part 4

Insurance Operations

33-6-401. Continuous certificate of authority — fee — evidence. (1) A benevolent association may not insure a risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) A benevolent association's certificate of authority continues in force as long as the benevolent association is entitled to it under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the benevolent association each year by payment before May 15 of the continuation fee of $25, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a benevolent association does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a benevolent association that has not

continued its certificate of authority of the impending expiration of its certificate of authority.

(4) The commissioner may in his discretion reinstate a certificate of authority that a benevolent association has inadvertently permitted to expire, after the benevolent association has fully cured all failures that resulted in the expiration and upon payment by the benevolent association of a $25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a benevolent association another certificate of authority only after the benevolent association files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to accord with changes in the benevolent association's charter of insuring powers.

(6) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297, L. 1971; R.C.M. 1947, 40-4918(part); amd. Sec. 3, Ch. 327, L. 1987.

33-6-402. Insurance producers — license. Insurance producers for any benevolent association may be appointed in accordance with chapter 17 and shall be subject to the applicable provisions of such chapter, except as provided in 33-6-403. No such insurance producer may be appointed if there are less than three officers in charge of the association.

History: En. Sec. 529, Ch. 286, L. 1959; R.C.M. 1947, 40-4909; amd. Sec. 146, Ch. 575, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-6-403. Officers as insurance producers. Not exceeding five officers of any benevolent association may act for the association without obtaining a license as an insurance producer. Such officers shall be subject to the jurisdiction of the commissioner in the same manner as though they were licensed as insurance producers under chapter 17.

History: En. Sec. 530, Ch. 286, L. 1959; R.C.M. 1947, 40-4910; amd. Sec. 1, Ch. 713, L. 1989.

33-6-404. Minimum membership. Each benevolent association shall have at all times not less than 200 members in good standing.

History: En. Sec. 532, Ch. 286, L. 1959; R.C.M. 1947, 40-4912.

33-6-405. Payment of death claims. (1) Each completed proof of claim for death of a member of a benevolent association shall be assigned a number by the association in consecutive order of receipt for each calendar year.

(2) Payment in full on final settlement of death benefits shall be made by the association to the legal heir or heirs or the designated beneficiary or beneficiaries within 20 days after the expiration date stated in the association's notice referred to in 33-6-303(1)(c).

History: En. Sec. 534, Ch. 286, L. 1959; R.C.M. 1947, 40-4914.

CHAPTER 7

FRATERNAL BENEFIT SOCIETIES

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33-7-526. Insurance producer license required — penalty.
33-7-527 through 33-7-530. Repealed.
33-7-531. Foreign or alien society — admission.
33-7-532. Producer licensing.
33-7-533. Unfair methods of competition and unfair or deceptive acts and practices.

Chapter Cross-References

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Part 1
General Provisions

33-7-101 through 33-7-104. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-101. En. Secs. 617, 672, Ch. 286, L. 1959; R.C.M. 1947, 40-5304, 40-5359; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 2, Ch. 139, L. 1987; amd. Sec. 15, Ch. 713, L. 1989.

33-7-102. (1), (2)En. Sec. 614, Ch. 286, L. 1959; Sec. 40-5301, R.C.M. 1947; (3)En. Sec. 615, Ch. 286, L. 1959; Sec. 40-5302, R.C.M. 1947; (4)En. Sec. 616, Ch. 286, L. 1959; Sec. 40-5303, R.C.M. 1947; R.C.M. 1947, 40-5301, 40-5302, 40-5303.

33-7-103. En. Sec. 645, Ch. 286, L. 1959; R.C.M. 1947, 40-5332.

33-7-104. En. Sec. 618, Ch. 286, L. 1959; amd. Sec. 21, Ch. 535, L. 1975; R.C.M. 1947, 40-5305.

33-7-105. Fraternal benefit societies. Any incorporated or unincorporated society, order, or supreme lodge, without capital stock, including a society exempted under the provisions of 33-7-126(1)(b), that is conducted solely for the benefit of its members and their beneficiaries and not for profit, that is operated on a lodge system with ritualistic forms of work, that has a representative form of government, and that provides benefits in accordance with this chapter, is a fraternal benefit society.

History: En. Sec. 1, Ch. 586, L. 1991.

33-7-106. Lodge system. (1) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges must be required by the laws of the society to hold regular meetings at least once a month in furtherance of the purposes of the society.

(2) A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of children, and children may not have a voice or vote in the management of a society.

History: En. Sec. 2, Ch. 586, L. 1991.

33-7-107. Representative form of government. (1) A society has a representative form of government if it has a supreme governing body organized as provided in subsection (2) or (3).

(2) (a) The supreme governing body may be an assembly composed of delegates who meet the criteria of subsection (5) and who are elected either by the members directly or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be

prescribed in the society's laws. A society may provide for election of delegates by mail.

(b) The delegates elected must be a majority of delegates and may not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly must be elected and shall meet at least once every 4 years and shall elect a board of directors to conduct the business of the society between meetings of the assembly.

(c) Vacancies on the board of directors may be filled in the manner prescribed by the society's laws.

(3) (a) (i) The supreme governing body may be:

(A) a board composed of persons who meet the criteria of subsection (5) and who are elected by the members, either directly or by their representatives in intermediate assemblies; and

(B) any other persons prescribed in the society's laws.

(ii) A society may provide for election of the board by mail.

(b) The term of a board member may not exceed 4 years. Vacancies on the board may be filled in the manner prescribed in the society's laws.

(c) The persons elected to the board must be a majority of the board and may not be less than the number of votes required to amend the society's laws. A person filling an unexpired term of an elected board member is considered to be an elected board member.

(d) The board shall meet at least quarterly to conduct the business of the society.

(4) The officers of the society must be elected either by the assembly or by the board of directors, either of which constitutes the supreme governing body.

(5) Only benefit members are eligible for election to the assembly, the board of directors, or an intermediate assembly.

(6) Each voting member shall have one vote. A vote may not be cast by proxy.

History: En. Sec. 3, Ch. 586, L. 1991.

33-7-108. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Benefit contract" means the agreement for provision of authorized benefits described in 33-7-520.

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Laws" means the society's articles of incorporation, charter, constitution, and bylaws.

(5) "Lodge" means subordinate member units of the society, known as camps, courts, councils, or branches or by any other designation.

(6) "Premiums" means premiums, rates, dues, or other required contributions that are payable under the certificate.

(7) "Rules" means all rules, regulations, or resolutions that are adopted by the supreme governing body or board of directors and that are intended to have general application to the members of the society.

(8) "Society" means a fraternal benefit society described in 33-7-105. The term includes an order or supreme lodge.

History: En. Sec. 4, Ch. 586, L. 1991.

33-7-109. Purposes and powers. (1) A society shall operate for the benefit of members and their beneficiaries by:

(a) providing benefits as provided in 33-7-520; and

(b) providing for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes, which may be extended to others. The purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

(2) A society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may amend laws and rules and exercise powers necessary and incidental to the objectives and purposes of the society.

History: En. Sec. 5, Ch. 586, L. 1991.

33-7-110. Qualification for membership. (1) A society shall specify in its laws or rules:

(a) eligibility standards for each class of membership. However, if benefits are provided on the lives of children, the minimum age for adult membership must be set at not less than 15 years of age and not more than 21 years of age.

(b) the process for admission to each membership class; and

(c) the rights and privileges of each membership class. However, only benefit members may vote on the management of the insurance affairs of the society.

(2) A society may admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

History: En. Sec. 6, Ch. 586, L. 1991.

33-7-111 through 33-7-116. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-111. En. Sec. 653, Ch. 286, L. 1959; R.C.M. 1947, 40-5340; amd. Sec. 1, Ch. 713, L. 1989.

33-7-112. En. Sec. 654, Ch. 286, L. 1959; R.C.M. 1947, 40-5341.

33-7-113. En. Sec. 655, Ch. 286, L. 1959; R.C.M. 1947, 40-5342.

33-7-114. En. Sec. 665, Ch. 286, L. 1959; R.C.M. 1947, 40-5352.

33-7-115. Ap. p. Sec. 669, Ch. 286, L. 1959; Sec. 40-5356, R.C.M. 1947; Ap. p. Sec. 670, Ch. 286, L. 1959; Sec. 40-5357, R.C.M. 1947; R.C.M. 1947, 40-5356, 40-5357.

33-7-116. En. Sec. 671, Ch. 286, L. 1959; R.C.M. 1947, 40-5358.

33-7-117. Scope — provisions applicable. (1) Except as provided in subsection (2), societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. The provisions of a law enacted after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the provisions of the law.

(2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; and chapters 17, 18, 20, and 22 apply to fraternal benefit

societies to the extent applicable and to the extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter.

History: **En. Sec. 23, Ch. 586, L. 1991.**

33-7-118. Reports — fee. Reports must be filed in accordance with the provisions of this section.

(1) On or before March 1 of each year, unless for cause shown the time has been extended by the commissioner of insurance, a society that transacts business in this state shall file with the commissioner of insurance a statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a filing fee of $25. The statement must be in the general form and context approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) As part of the annual statement, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on the preceding December 31. The commissioner may, for cause shown, extend for not more than 2 calendar months the time for filing the valuation. The valuation must be done in accordance with the standards specified in 33-7-411. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society that fails to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which the failure continues, and, upon notice by the commissioner to that effect, its authority to do business in this state ceases while the default continues.

History: **En. Sec. 26, Ch. 586, L. 1991.**

33-7-119. Examination of societies. (1) The commissioner of insurance or any person he may appoint may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, are applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expenses of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

History: **En. Sec. 28, Ch. 586, L. 1991.**

33-7-120. Injunction — liquidation — receivership of domestic society. (1) The commissioner of insurance shall notify a domestic society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of this chapter;

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why it should not be enjoined from transacting business until the violation complained of is corrected or why an action in quo warranto should not be commenced against the society.

(3) If the society does not present sufficient reasons why it should not be enjoined from transacting business or why the quo warranto action should not be commenced, the commissioner may present the facts relating to his determination to the attorney general who shall, if he finds that the circumstances warrant, commence an action to enjoin the society from transacting business or an action in quo warranto.

(4) The court shall notify the officers of the society of a hearing. If after a hearing it appears that the society should be enjoined or liquidated or that a receiver should be appointed, the court shall enter the necessary order. A society enjoined from transacting business may not do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of the action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the certificate of authority.

(5) If the court orders the society liquidated, it is enjoined from transacting any further business. The receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and distribute its funds to those entitled to the funds.

(6) An action under this section may not be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. The court shall appoint the commissioner as the receiver for a domestic society.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership apply to a society that voluntarily decides to discontinue business.

History: En. Sec. 30, Ch. 586, L. 1991.

33-7-121. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner of insurance shall notify a foreign or alien society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why its authority to do business in this state should not be suspended, revoked, or refused.

(3) If the society does not present sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may:

(a) suspend or refuse the authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn; or

(b) revoke the authority of the society to do business in this state.

(4) Nothing in this section may be construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state.

History: En. Sec. 31, Ch. 586, L. 1991.

33-7-122. Injunction. An application or petition for injunction against any domestic, foreign, or alien society or lodge of a society may not be recognized in any court of this state unless made by the attorney general upon request of the commissioner of insurance.

History: En. Sec. 32, Ch. 586, L. 1991.

33-7-123. Commissioner as agent — service of process — procedure — fee. (1) A society authorized to do business in this state shall appoint in writing the commissioner of insurance as its agent upon whom all lawful process in any action or proceeding against it must be served. The society shall agree in writing that any lawful process against it that is served on the commissioner is of the same legal force and validity as if it had been served upon the society. The appointment continues in force as long as any liability remains outstanding in this state. Copies of the appointment, certified by the commissioner, may be admitted in evidence.

(2) Service may be made only upon the commissioner or, if absent, upon the person in charge of the commissioner's office. Service must be made in duplicate and constitutes service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by certified mail to the secretary or corresponding officer of the society. The service may not require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to the society.

(3) Legal process may not be served upon a society except in the manner provided in this section.

(4) At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

History: En. Sec. 35, Ch. 586, L. 1991.

33-7-124. Review. All decisions and findings of the commissioner of insurance made under the provisions of this chapter are subject to review by the court in accordance with the provisions of 33-1-711.

History: En. Sec. 36, Ch. 586, L. 1991.

33-7-125. Penalties. (1) A person who makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from a benefit in any society is guilty of a misdemeanor.

(2) A person who solicits membership for, or in any manner assists in procuring membership in, any society not authorized to transact business in this state is subject to an administrative fine, imposed by the commissioner of insurance, of not less than $25 or more than $500 for each violation.

(3) A person convicted of a willful violation of, or neglect or refusal to comply with, any provision of this chapter for which a penalty is not otherwise prescribed shall be punished by a fine of not more than $1,000 for each violation and not more than $10,000 for all related violations.

History: En. Sec. 37, Ch. 586, L. 1991.

33-7-126. Exemption of certain societies. (1) Nothing in this chapter may be construed to affect or apply to:

(a) grand or subordinate lodges of societies, orders, or associations doing business in this state on July 1, 1992, that provide benefits exclusively through local or subordinate lodges;

(b) (i) orders, societies, or associations that admit to membership only persons engaged in one or more crafts or hazardous occupations or in the same or similar lines of business and that insure only their own members and their families; and

(ii) the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) domestic societies that limit their membership to employees of a particular city or town, designated firm, business house, or corporation and that provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any 1 year, or both; or

(d) domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to a person in any 1 year, or both.

(2) A society or association described in subsections (1)(c) or (1)(d) that provides for death or disability benefits for which benefit certificates are issued and a society or association included in subsection (1)(d) that has more than 1,000 members are not exempt from the provisions of this chapter.

(3) A society that is exempt under this section from the requirements of this chapter, except a society described in subsection (1)(b), may not give or allow or promise to give or allow to any person any compensation for procuring new members.

(4) A society that provides for benefits in case of death or disability resulting solely from accident and that does not obligate itself to pay natural death or sick benefits has all of the privileges and is subject to all the applicable provisions and regulations of this chapter except the provisions of

this chapter that relate to medical examination, valuations of benefit certificates, and incontestability.

(5) The commissioner may require from a society or association, by examination or otherwise, any information that will enable the commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(6) A society that is exempt under the provisions of this section is also exempt from all other provisions of the insurance laws of this state.

History: En. Sec. 38, Ch. 586, L. 1991.

Part 2

Formation

33-7-201 through 33-7-207. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-201. En. Sec. 622, Ch. 286, L. 1959; R.C.M. 1947, 40-5309.

33-7-202. En. Sec. 623, Ch. 286, L. 1959; R.C.M. 1947, 40-5310.

33-7-203. En. Sec. 624, Ch. 286, L. 1959; R.C.M. 1947, 40-5311.

33-7-204. En. Sec. 625, Ch. 286, L. 1959; R.C.M. 1947, 40-5312.

33-7-205. En. Sec. 626, Ch. 286, L. 1959; R.C.M. 1947, 40-5313.

33-7-206. En. Sec. 629, Ch. 286, L. 1959; R.C.M. 1947, 40-5316(part).

33-7-207. En. Sec. 628, Ch. 286, L. 1959; R.C.M. 1947, 40-5315.

33-7-208. Organization. A domestic society organized on or after January 1, 1992, must be formed as follows:

(1) Ten or more citizens of the United States, a majority of whom are residents of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before a notary public, an application for articles of incorporation that states:

(a) the proposed corporate name of the society, which may not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes may not include more liberal powers than are granted by this chapter.

(c) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all officers are elected by the supreme governing body. The election must be held not later than 1 year from the date of issuance of the permanent certificate of authority.

(2) The application for articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications for certificates, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year must be filed with the commissioner, who may require further information considered necessary. The bond, with sureties approved by the commissioner, must be in an amount, not less than $300,000 or more than $1,500,000, required by the commissioner. All documents filed must be in English. If the purposes of the society conform to

the requirements of this chapter and all provisions of law have been complied with, the commissioner shall certify, retain, and file the articles of incorporation and furnish to the incorporators a preliminary certificate of authority authorizing the society to solicit members.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after 1 year from its date of issuance or after an extended period, not exceeding 1 year, as may be authorized by the commissioner upon good cause shown, unless the 500 applicants required under subsection (4) have been secured and the organization has been completed. The charter and all other proceedings under the charter are void 1 year from the date of issuance of the preliminary certificate of authority or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society may not incur a liability other than for the return of an advance premium, issue any certificate, or pay, allow, offer, or promise to pay or allow any benefit to a person until:

(a) actual applications for benefits have been secured, aggregating at least $500,000, on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) there has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums for benefits; and

(d) it has been shown to the commissioner, by sworn statement of the treasurer or the corresponding officer of the society, that at least 500 applicants have each paid in cash at least one regular monthly premium. The aggregate premiums must amount to at least $150,000. The advance premiums must be held in trust during the period of organization. If the society has not qualified for a certificate of authority within 1 year, unless extended as provided in subsection (3), the premiums must be returned to the applicants.

(5) The commissioner may in his discretion require and examine additional information he considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue a certificate of authority to the society, authorizing it to transact business pursuant to the provisions of this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall record the certificate of authority.

(6) A society authorized to transact business in this state on January 1, 1992, is not required to reincorporate.

(7) An unincorporated or voluntary association may not transact business in this state as a society. Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, may incur the obligations and enjoy the benefits of a society as if it were originally incorporated, and the corporation is considered a continuation of the original voluntary association. The officers must be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association does not affect existing suits, claims, or contracts.

History: En. Sec. 10, Ch. 586, L. 1991.

33-7-209. Amendments to laws. (1) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws provide, by referendum. The referendum may be held in accordance with the provisions of its laws by a vote of the voting members of the society, by a vote of delegates or representatives of voting members, or by a vote of local lodges. A society may provide for voting by mail. An amendment submitted by referendum may not be adopted unless, within 6 months from the date of submission, a majority of the members voting have signified their consent to the amendment.

(2) An amendment to the laws of a domestic society does not take effect unless approved by the commissioner of insurance, who shall approve the amendment if he finds that it has been adopted and is not inconsistent with any requirement of the laws of this state or with the character, objectives, and purposes of the society. Unless the commissioner disapproves an amendment within 60 days after its filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval must be stated in the written notice.

(3) Within 90 days of approval by the commissioner, all amendments or a synopsis of the amendments must be furnished to all members of the society, either by mail or by publication in full in the official publication of the society.

(4) A foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of or additions to its laws within 90 days after their enactment.

(5) Printed copies of the laws, as amended, that are certified by the secretary or a corresponding officer of the society are prima facie evidence of their legal adoption.

History: En. Sec. 11, Ch. 586, L. 1991.

33-7-210. Institutions. (1) A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by 33-7-109(1)(b). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for these purposes must be reported in every annual statement but may not be allowed as an admitted asset of the society.

(2) A society may not own or operate funeral homes or undertaking establishments.

History: En. Sec. 12, Ch. 586, L. 1991.

33-7-211. Repealed. Sec. 41, Ch. 586, L. 1991.
History: En. Sec. 666, Ch. 286, L. 1959; R.C.M. 1947, 40-5353.

33-7-212. Repealed. Sec. 41, Ch. 586, L. 1991.
History: En. Sec. 667, Ch. 286, L. 1959; R.C.M. 1947, 40-5354.

33-7-213. Repealed. Sec. 41, Ch. 586, L. 1991.
History: En. Sec. 668, Ch. 286, L. 1959; R.C.M. 1947, 40-5355.

33-7-214. Reinsurance. (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make the reinsurance and authorized to do business in this state or, if not authorized to do business in this state, an insurer that is approved by the commissioner of insurance. A society may not reinsure substantially all of its insurance in force without the written permission of the commissioner. A society may take credit for the reserves on the ceded risks to the extent reinsured. A credit may not be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective on or after July 1, 1992, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(2) Notwithstanding the limitation in subsection (1), a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under 33-7-215.
History: En. Sec. 13, Ch. 586, L. 1991.

33-7-215. Consolidations and mergers. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. The consolidated or merged society shall file with the commissioner of insurance:

(a) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition of each society on a date fixed by the commissioner, but not earlier than December 31 preceding the date of the contract;

(c) a certificate of the officers of each society, verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, held at a regular or special meeting of each body or, if the society's laws permit, by mail; and

(d) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract was furnished to all members of each society, either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract containing the terms and conditions of the proposed consolidation or merger is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commis-

sioner shall approve the contract and issue a certificate approving the contract.

(3) Upon approval, the contract is in full force and effect unless a society that is a party to the contract is incorporated under the laws of any other state, district, territory, province, or country. In that event, the consolidation or merger is not effective until it is approved as provided by the laws of that state, district, territory, province, or country and a certificate of approval has been filed with the commissioner of insurance of this state.

(4) When the consolidation or merger becomes effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every type of property, real, personal, or mixed, and things in action pertaining to the property are vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by deeds. The title to any real property or interest in real property vested under the laws of this state in any of the societies consolidated or merged may not revert or be impaired by reason of the consolidation or merger, but the title vests in the society resulting from or remaining after the consolidation or merger.

(5) The affidavit of any officer of the society or of anyone authorized by the society to mail a notice or document, stating that the notice or document has been addressed and mailed, is prima facie evidence that the notice or document has been furnished to the addressees.

History: En. Sec. 14, Ch. 586, L. 1991.

33-7-216. Conversion of a society into a mutual life insurance company. A domestic society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of Title 33 if the plan of conversion has been approved by the commissioner of insurance. The board of directors shall prepare a written plan of conversion that sets forth in full the terms and conditions of conversion. An affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan. A conversion may not take effect unless approved by the commissioner, who may approve the conversion if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

History: En. Sec. 15, Ch. 586, L. 1991.

33-7-217. Annual certificate — fees. (1) A society may not insure a risk in this state unless it holds a certificate of authority issued to it by the commissioner of insurance.

(2) A society's certificate of authority continues in force as long as the society is entitled to it under this chapter and until suspended, revoked, or otherwise terminated. However, continuance of the certificate by the society is conditioned upon payment before May 15 of each year of a continuation fee of $10. The fee must be deposited by the commissioner of insurance with the state treasurer to the credit of the state general fund.

(3) If a society does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on the May 31 following its failure to continue it in force. In that case, the commissioner

shall promptly notify the society of the impending expiration of its certificate of authority.

(4) The commissioner may reinstate a certificate of authority that a society has inadvertently permitted to expire, after the society has fully cured all failures that resulted in the expiration and upon payment by the society of a $25 fee for reinstatement in addition to the continuation fee provided for in subsection (2). If a certificate is not reinstated, the commissioner may grant a society another certificate of authority only after the society files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to conform to changes in a society's charter of insuring powers.

(6) A certified copy or duplicate of a certificate of authority is prima facie evidence that the society is a fraternal benefit society within the meaning of this chapter.

History: **En. Sec. 27, Ch. 586, L. 1991.**

Part 3

Management

33-7-301 through 33-7-305. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-301. En. Sec. 627, Ch. 286, L. 1959; R.C.M. 1947, 40-5314.

33-7-302. En. Sec. 630, Ch. 286, L. 1959; R.C.M. 1947, 40-5317.

33-7-303. En. Sec. 631, Ch. 286, L. 1959; R.C.M. 1947, 40-5318.

33-7-304. En. Sec. 632, Ch. 286, L. 1959; R.C.M. 1947, 40-5319.

33-7-305. En. Sec. 633, Ch. 286, L. 1959; R.C.M. 1947, 40-5320.

33-7-306. Location of office — meetings — communication to members — grievance procedures. (1) The principal office of a domestic society must be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least five subordinate lodges or in a location determined by the supreme governing body. All business transacted at meetings is valid. The minutes of the proceedings of the supreme governing body and of the board of directors must be in English.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is considered to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1 of each year, a synopsis of the society's annual statement, providing an explanation of the facts concerning the condition of the society, must be printed and mailed to each benefit member of the society, or the synopsis may be published in the society's official publication.

(3) A society may provide in its laws or rules for grievance or complaint procedures for members.

History: **En. Sec. 7, Ch. 586, L. 1991.**

33-7-307. No personal liability. (1) The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

(2) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon him in connection with or arising out of an action, suit, or proceeding (whether civil, criminal, administrative, or investigative) or threat thereof in which the person may be involved by reason of the fact that he is or was a director, officer, employee, or agent of the society or of a firm, corporation, or organization that he served in any capacity at the request of the society.

(3) (a) A person may not be indemnified or reimbursed in relation to any matter in an action, suit, or proceeding:

(i) in which he is finally found to be guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(ii) that is the subject of a compromise settlement.

(b) A person may be indemnified or reimbursed if he acted in good faith for a purpose he reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful.

(4) The determination of whether the person's conduct met the standard required in order to justify indemnification or reimbursement in relation to any matter described in subsection (3) may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of an action, suit, or proceeding by a judgment, order, settlement, or conviction or upon a plea of no contest, does not create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification or reimbursement. The right of indemnification or reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law, and the right inures to the benefit of his heirs, executors, and administrators.

(5) A director, officer, employee, member, or volunteer of a society who serves without compensation may not be held liable, and a cause of action may not be brought, for damages resulting from the exercise of judgment or discretion in connection with the person's duties or responsibilities for the society unless the act or omission involved willful or wanton misconduct.

(6) A society may purchase and maintain liability insurance for acts incurred in the course and scope of the position for a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization.

History: En. Sec. 8, Ch. 586, L. 1991.

33-7-308. Waiver. The laws of the society may provide that a subordinate body or any of its subordinate officers or members may not waive any of the provisions of the laws of the society. The provision is binding on the society and every member and beneficiary of a member.

History: En. Sec. 9, Ch. 586, L. 1991.

Part 4
Finance

33-7-401 through 33-7-407. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-401. En. Sec. 635, Ch. 286, L. 1959; R.C.M. 1947, 40-5322.

33-7-402. En. Sec. 648, Ch. 286, L. 1959; R.C.M. 1947, 40-5335.

33-7-403. En. Sec. 649, Ch. 286, L. 1959; R.C.M. 1947, 40-5336.

33-7-404. En. Sec. 650, Ch. 286, L. 1959; R.C.M. 1947, 40-5337.

33-7-405. En. Sec. 651, Ch. 286, L. 1959; R.C.M. 1947, 40-5338; amd. Sec. 13, Ch. 303, L. 1981.

33-7-406. En. Sec. 652, Ch. 286, L. 1959; R.C.M. 1947, 40-5339.

33-7-407. En. Sec. 656, Ch. 286, L. 1959; R.C.M. 1947, 40-5343.

33-7-408. Investments. A society may invest its funds only in investments authorized by the laws of this state for the investment of assets of life insurers. A foreign or alien society that is permitted or seeking to do business in this state and that invests its funds in accordance with the laws of the state, district, territory, province, or country where it is incorporated meets the requirements of this section for the investment of funds.

History: En. Sec. 21, Ch. 586, L. 1991.

33-7-409. Funds. (1) All assets must be held, invested, and disbursed for the use and benefit of the society, and a member or beneficiary may not have or acquire individual rights in assets or become entitled to any apportionment on the surrender of any part of the assets except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) Pursuant to a resolution of its supreme governing body, a society may establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing similar accounts and issuing similar contracts. To the extent the society considers it necessary in order to comply with any applicable federal or state laws or any rules issued under those laws, the society may adopt special procedures for administering a separate account and may, for persons having beneficial interests in a separate account, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account. A society may issue contracts on a variable basis to which the provisions of 33-7-523(2) and (4) do not apply.

History: En. Sec. 22, Ch. 586, L. 1991.

33-7-410. Taxation. A society organized or licensed under this chapter is a charitable and benevolent institution, and all of its funds are exempt from all state, county, district, municipal, and school taxes other than taxes on real estate and office equipment.

History: En. Sec. 24, Ch. 586, L. 1991.

33-7-411. Valuation. (1) Standards of valuation for certificates issued prior to July 1, 1993, must be those provided by the laws applicable immediately prior to July 1, 1992.

(2) (a) The minimum standards of valuation for certificates issued on or after July 1, 1993, must be based on the following tables:

(i) for certificates of life insurance—the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(ii) for annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits—the tables authorized for use by life insurers in this state.

(b) All of the certificates must be valued under valuation methods and standards, including interest assumptions, that are in accordance with the laws of this state applicable to life insurers that issue policies containing similar benefits.

(3) The commissioner may accept other standards for valuation if he finds that the reserves produced by the valuation will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extrahazardous lives by a society authorized to do business in this state.

(4) A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions, if any, that the commissioner may impose, may establish and maintain reserves on its certificates in excess of required reserves, but the contractual rights of a benefit member may not be affected by the excess reserves.

History: En. Sec. 25, Ch. 586, L. 1991.

Part 5

Insurance Operations

33-7-501 through 33-7-519. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-501. En. Sec. 619, Ch. 286, L. 1959; R.C.M. 1947, 40-5306(part); amd. Sec. 4, Ch. 327, L. 1987.

33-7-502. En. Sec. 620, Ch. 286, L. 1959; R.C.M. 1947, 40-5307.

33-7-503. En. Sec. 621, Ch. 286, L. 1959; R.C.M. 1947, 40-5308.

33-7-504. En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-505. En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-506. En. Sec. 636, Ch. 286, L. 1959; R.C.M. 1947, 40-5323.

33-7-507. En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(1).

33-7-508. En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(2).

33-7-509. En. Sec. 638, Ch. 286, L. 1959; R.C.M. 1947, 40-5325; amd. Sec. 14, Ch. 303, L. 1981.

33-7-510. En. Sec. 639, Ch. 286, L. 1959; R.C.M. 1947, 40-5326.

33-7-511. En. Sec. 640, Ch. 286, L. 1959; R.C.M. 1947, 40-5327.

33-7-512. En. Sec. 641, Ch. 286, L. 1959; R.C.M. 1947, 40-5328.

33-7-513. En. Sec. 642, Ch. 286, L. 1959; R.C.M. 1947, 40-5329.

33-7-514. En. Sec. 643, Ch. 286, L. 1959; R.C.M. 1947, 40-5330; amd. Sec. 16, Ch. 198, L. 1979.

33-7-515. En. Sec. 644, Ch. 286, L. 1959; R.C.M. 1947, 40-5331.

33-7-516. En. Sec. 646, Ch. 286, L. 1959; R.C.M. 1947, 40-5333.

33-7-517. En. Sec. 647, Ch. 286, L. 1959; R.C.M. 1947, 40-5334.

33-7-518. En. Sec. 663, Ch. 286, L. 1959; R.C.M. 1947, 40-5350.

33-7-519. En. Sec. 664, Ch. 286, L. 1959; R.C.M. 1947, 40-5351; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

33-7-520. Benefits. (1) A society may provide the following contractual benefits in any form:

(a) death benefits;

(b) endowment benefits;

(c) annuity benefits;

(d) temporary or permanent disability benefits;

(e) hospital, medical, or nursing benefits;

(f) monument or tombstone benefits to the memory of deceased members; and

(g) other benefits authorized for life insurers that are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued or covered by the contractual benefits in subsection (1), consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

History: En. Sec. 16, Ch. 586, L. 1991.

33-7-521. Beneficiaries. (1) The owner of a benefit contract may change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a revocable beneficiary may not have or obtain a vested interest in the proceeds of a certificate until the certificate becomes due and payable under the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits of up to $500 under a certificate due to a person equitably entitled to payment for the burial of a member.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection (2), is payable to the estate of the deceased. If the owner of the certificate is a person other than the insured, the proceeds are payable to the owner.

History: En. Sec. 17, Ch. 586, L. 1991.

33-7-522. Benefits not attachable. Money or other benefits, charity, relief, or aid to be paid, provided, or rendered by a society is not liable to attachment, garnishment, or other process and may not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right to the benefit, either before or after payment by the society.

History: **En. Sec. 18, Ch. 586, L. 1991.**

33-7-523. Benefit contract. (1) A society authorized to do business in this state shall issue to the owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate must state that the certificate, together with any attached riders or endorsements, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, constitutes the benefit contract, as of the date of issuance, between the society and the owner. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application must be representations and not warranties. Any waiver of this provision is void.

(2) Any changes, additions, or amendments to the laws of the society made or enacted after the issuance of the certificate bind the owner and the beneficiaries and control the benefit contract in all respects as if the changes, additions, or amendments were in force at the time of the application for insurance. However, a change, addition, or amendment does not destroy or diminish benefits that the society contracted to give the owner as of the date of issuance.

(3) A person upon whose life a benefit contract is issued before attaining the age of majority is bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves for one or more classes of certificates become impaired, its board of directors or corresponding body may require that the owner of a certificate pay to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board and that if the payment is not made either:

(a) it is an indebtedness against the certificate and draws interest not to exceed the rate specified for certificate loans under the certificates; or

(b) in lieu of or in combination with the provisions of subsection (4)(a), the owner of the certificate may accept a proportionate reduction in benefits under the certificate.

(5) The society may specify the manner of election and which alternative under subsection (4) is to be presumed if no election is made.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, must be received in evidence concerning the terms and conditions of the documents.

(7) A certificate may not be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner of insurance in the manner provided for policies issued by life and disability insurers in this state. Certificates issued prior to July 1, 1993, must conform to the requirements provided by the laws applicable immediately prior to July 1, 1992. A life, disability, or annuity certificate issued on or after July 1, 1993, must meet the standard contract provision requirements not inconsistent with this chapter for policies issued by life and disability insurers in this state,

except that a society may provide in its certificates for a grace period of 1 month for payment of premiums. The certificate must contain a provision stating the amount of premiums payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate that, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for the expulsion or suspension of a member, the certificate must contain a provision that a member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and it may provide in all other respects for the regulation, government, and control of the certificates and all rights, obligations, and liabilities incident to and connected with the transfer. Ownership rights prior to the transfer must be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

History: En. Sec. 19, Ch. 586, L. 1991.

33-7-524. Nonforfeiture benefits, cash surrender values, certificate loans, and other options. (1) For certificates issued prior to July 1, 1993, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately prior to July 1, 1992.

(2) For certificates issued on or after July 1, 1993, for which reserves are computed on the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted may not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing similar benefits based upon the tables.

History: En. Sec. 20, Ch. 586, L. 1991.

33-7-525. Insurance producer defined. The term "insurance producer" as used in this chapter means any authorized or acknowledged insurance producer of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident and health insurance, or annuity contract. The term "insurance producer" does not include any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

History: En. Sec. 657, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(2); amd. Sec. 15, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-7-526. Insurance producer license required — penalty. (1) Insurance producers of societies shall be considered to be insurance producers and subject to the same licensing requirements as insurance producers under chapter 17 of this code, except that no examination is required of an individual lawfully licensed in this state as an insurance producer for a fraternal benefit society as to the kind of insurance to be transacted as of or immediately prior to October 1, 1981, and thereafter continuing to be so licensed.

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract, except to a licensed insurance producer of such society.

(3) Any person who in this state acts as insurance producer for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall be guilty of a misdemeanor.

History: En. Secs. 657, 658, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(1), 40-5345; amd. Sec. 16, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Sentence — when no penalty is specified, 46-18-212.

33-7-527 through 33-7-530. Repealed. Sec. 29, Ch. 303, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

33-7-527. En. Sec. 659, Ch. 286, L. 1959; R.C.M. 1947, 40-5346.

33-7-528. En. Sec. 660, Ch. 286, L. 1959; R.C.M. 1947, 40-5347.

33-7-529. En. Sec. 662, Ch. 286, L. 1959; R.C.M. 1947, 40-5349.

33-7-530. En. Sec. 661, Ch. 286, L. 1959; R.C.M. 1947, 40-5348.

33-7-531. Foreign or alien society — admission. (1) A foreign or alien society may not transact business in this state without a license issued by the commissioner of insurance. A foreign or alien society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) a certified copy of its articles of incorporation;

(b) a copy of its bylaws, certified by its secretary or corresponding officer;

(c) a written appointment of the commissioner to be the society's agent, as prescribed in 33-7-123;

(d) a statement of its business, under oath of its president and secretary or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, district, territory, province, or country satisfactory to the commissioner of this state;

(e) certification from the proper official of its home state, district, territory, province, or country that the society is legally incorporated and licensed to transact business in that jurisdiction;

(f) copies of its certificate forms; and

(g) other information the commissioner considers necessary.

(2) A foreign or alien society applying for authority to transact business in this state must have the qualifications required of domestic societies organized under this chapter.

History: **En. Sec. 29, Ch. 586, L. 1991.**

33-7-532. Producer licensing. (1) A society's insurance producer must be considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17, except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer.

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract.

History: **En. Sec. 33, Ch. 586, L. 1991.**

33-7-533. Unfair methods of competition and unfair or deceptive acts and practices. A society authorized to do business in this state and its insurance producers are subject to the provisions of chapter 18 that relate to unfair or deceptive trade practices. However, nothing in chapter 18 may be construed as applying to or affecting the right of a society to determine its eligibility requirements for membership or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

History: **En. Sec. 34, Ch. 586, L. 1991.**

CHAPTER 8

INSURANCE ASSISTANCE PLANS

(Terminated. Sec. 1, Ch. 134, L. 1979;
Sec. 22, Ch. 11, Sp. L. March 1986;
Sec. 1, Ch. 404, L. 1987)

Chapter Compiler's Comments

Sections Terminated:

33-8-101 through 33-8-114. Terminated. Sec. 1, Ch. 134, L. 1979.

33-8-115 through 33-8-124. Terminated. Sec. 1, Ch. 404, L. 1987.

33-8-201 through 33-8-231. Terminated. Sec. 22, Ch. 11, Sp. L. March 1986.

Histories of Terminated Sections:

33-8-101 through 33-8-114. En. 40-6001 thru 40-6010 by Secs. 1 thru 10, Ch. 246, L. 1977; R.C.M. 1947, 40-6001 thru 40-6010.

33-8-115 through 33-8-124. En. Secs. 1 thru 10, Ch. 301, L. 1985.

33-8-201. En. Sec. 1, Ch. 11, Sp. L. March 1986.

33-8-202. En. Sec. 2, Ch. 11, Sp. L. March 1986.

33-8-203. En. Sec. 3, Ch. 11, Sp. L. March 1986.

33-8-204. En. Sec. 15, Ch. 11, Sp. L. March 1986.

33-8-205. En. Sec. 16, Ch. 11, Sp. L. March 1986.

33-8-206 through 33-8-210 reserved.

33-8-211. En. Sec. 4, Ch. 11, Sp. L. March 1986.

33-8-212. En. Sec. 5, Ch. 11, Sp. L. March 1986.

33-8-213. En. Sec. 6, Ch. 11, Sp. L. March 1986; amd. Sec. 16, Ch. 713, L. 1989.

33-8-214. En. Sec. 7, Ch. 11, Sp. L. March 1986.

33-8-215 through 33-8-220 reserved.

33-8-221. En. Sec. 8, Ch. 11, Sp. L. March 1986.

33-8-222. En. Sec. 9, Ch. 11, Sp. L. March 1986.

33-8-223 and 33-8-224 reserved.

33-8-225. En. Sec. 10, Ch. 11, Sp. L. March 1986.

33-8-226. En. Sec. 11, Ch. 11, Sp. L. March 1986.

33-8-227. En. Sec. 12, Ch. 11, Sp. L. March 1986.

33-8-228. En. Sec. 13, Ch. 11, Sp. L. March 1986.

33-8-229 and 33-8-230 reserved.

33-8-231. En. Sec. 14, Ch. 11, Sp. L. March 1986.

CHAPTER 9

PROFESSIONAL LIABILITY INSURANCE

Part 1 — General Provisions

33-9-101. Definitions.
33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers.
33-9-103. Incorporation and regulation.
33-9-104. Initial qualifications.
33-9-105. Foreign or alien insurers — certification.

Chapter Cross-References

Professional liability, Title 33, ch. 23, part 3.

Part 1

General Provisions

33-9-101. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(2) "Other professional" means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

History: En. 40-4759 by Sec. 1, Ch. 119, L. 1977; R.C.M. 1947, 40-4759(intro.), (2), (3).

33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting himself by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

History: **En. 40-4760 by Sec. 2, Ch. 119, L. 1977; R.C.M. 1947, 40-4760.**

33-9-103. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 33-9-102, shall organize under the provisions of Title 33 and be regulated as therein provided. The provisions of this part govern whenever in conflict with other laws or parts of laws of any state.

History: **En. 40-4761 by Sec. 3, Ch. 119, L. 1977; R.C.M. 1947, 40-4761.**

Cross-References

Formation of domestic mutual or stock insurers, Title 33, ch. 3, part 2.

Formation of reciprocal insurer, Title 33, ch. 5, part 2.

33-9-104. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

History: **En. 40-4762 by Sec. 4, Ch. 119, L. 1977; R.C.M. 1947, 40-4762.**

Cross-References

Original certificate of authority — general requirements, 33-2-115.

33-9-105. Foreign or alien insurers — certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this part for the purpose of transacting the kind of business described in this part may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

History: **En. 40-4763 by Sec. 5, Ch. 119, L. 1977; R.C.M. 1947, 40-4763.**

CHAPTER 10

INSURANCE GUARANTY ASSOCIATIONS

Part 1 — Casualty and Property Insurance Guaranty Associations

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Part 2 — Life and Health Insurance Guaranty Associations

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33-10-224. Extent of liability.
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33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.
33-10-229. Repealed.
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Part 1

Casualty and Property Insurance Guaranty Associations

Part Cross-References

Insurer supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

Montana Self-Insurers Guaranty Fund Act, Title 39, ch. 71, part 26.

33-10-101. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.

History: En. Secs. 1, 2, 3, 4, Ch. 63, L. 1971; R.C.M. 1947, 40-5701, 40-5702, 40-5703, 40-5704; amd. Sec. 3, Ch. 139, L. 1987.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) "Covered claim" shall not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means any person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971; R.C.M. 1947, 40-5705(1), (3) thru (7).

33-10-103. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under 33-10-106 and shall exercise its powers through a board of directors established under 33-10-104.

History: En. Sec. 6, Ch. 63, L. 1971; R.C.M. 1947, 40-5706.

33-10-104. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971; R.C.M. 1947, 40-5707(part).

33-10-105. General powers and duties. (1) The association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that is in excess of $100 and is less than $300,000, except that:

(A) the association shall pay an amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a);

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts as are necessary to carry out the purpose of this part;

(e) perform other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(part); amd. Sec. 53, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (1)(a)(ii)(A), after "pay", inserted "an amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium"; and made minor changes in style.

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-106. Plan of operation — delegation to other organization. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) establish the procedures whereby all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(2)(b) and 33-10-116, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Notice and hearing by Commissioner, 33-1-313.

33-10-107. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971; R.C.M. 1947, 40-5715.

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-108. Prevention of insolvencies — directors' and commissioner's action. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination

shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971; R.C.M. 1947, 40-5713; amd. Sec. 140, Ch. 575, L. 1981.

Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner. (1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after he receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(c) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971; R.C.M. 1947, 40-5710.

Cross-References

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

33-10-110. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its insurance producers or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 17, Ch. 63, L. 1971; R.C.M. 1947, 40-5717; amd. Sec. 1, Ch. 713, L. 1989.

33-10-111. Stay of proceedings — reopening of default judgments. (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state must be stayed for 6 months from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and must be permitted to defend against the claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971; R.C.M. 1947, 40-5718; amd. Sec. 54, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (1) increased length of stay of proceedings from 60 days to 6 months and near middle, after "insolvency is determined", inserted "or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order"; and made minor changes in style.

Cross-References

Standing of associations, 33-2-1335, 33-2-1349.

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

33-10-112. Examination of association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971; R.C.M. 1947, 40-5714.

33-10-113. Claims — notice. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its insurance producer, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part); amd. Sec. 1, Ch. 713, L. 1989.

33-10-114. Claims — effect as to insured and receiver. (1) Any person recovering under this part is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent that the person would have been required to cooperate with the insolvent insurer. The association does not have a cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action that the insolvent insurer would have had if the sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association may not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The association has the right to recover from the following persons the amount of any "covered claim" paid on behalf of the person pursuant to this part:

(a) any insured whose net worth, on December 31 of the year preceding the date the insurer becomes an insolvent insurer, exceeds $50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(b) any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

(3) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant the claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims must be accorded the same priority as the liquidator's expenses.

(4) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971; R.C.M. 1947, 40-5711; amd. Sec. 55, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (2) regarding the association's right of recovery of the amount of a covered claim; and made minor changes in style.

Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

Standing of associations, 33-2-1335, 33-2-1349.

Priority of association's claims, 33-2-1363.

33-10-115. Recovery — sequence — nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he

shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971; R.C.M. 1947, 40-5712.

33-10-116. Assessment. (1) The association shall assess insurers amounts necessary to pay the obligations of the association under 33-10-105(1)(a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under 33-10-108, and other expenses authorized by this part.

(2) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 2% of that member insurer's net direct written premiums for the preceding calendar year.

(3) If the maximum assessment together with the other assets of the association does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(4) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

(5) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(1)(c).

33-10-117. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971; R.C.M. 1947, 40-5716.

Part 2
Life and Health Insurance Guaranty Associations

Part Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

Montana Self-Insurers Guaranty Fund Act, Title 39, ch. 71, part 26.

33-10-201. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part applies to direct, nongroup life, health, annuity, and supplemental policies or contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(5) This part provides coverage for covered policies:

(a) to persons who are owners of or certificate holders under covered policies, and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) This part does not apply to:

(a) any policies or contracts or any part of the policies or contracts under which the risk is borne by the policyholder;

(b) any policy or contract or part of the policy or contract assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to an employee benefit plan that is protected under the federal pension benefit guaranty corporation; and

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(7) This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

(8) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

History: En. 40-5801 thru 40-5804, 40-5814 by Secs. 1 thru 4, 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5801, 40-5802, 40-5803, 40-5804, 40-5814(1); amd. Sec. 1, Ch. 576, L. 1987; amd. Sec. 56, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 substituted (4) clarifying contracts and certificates to which the part applies for former language that read: "This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time"; inserted (6)(c) through (6)(h) outlining additional exceptions to which the part does not apply; and made minor changes in style.

33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) through (6) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate.

History: En. 40-5805 by Sec. 5, Ch. 245, L. 1974; R.C.M. 1947, 40-5805(1), (2), (4) thru (10); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 2, Ch. 576, L. 1987; amd. Sec. 57, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted definition of unallocated annuity contract; and made minor changes in style.

33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account; and

(iii) the unallocated annuity account that must include unallocated annuity contracts qualified under section 403(b) of the Internal Revenue Code.

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974; R.C.M. 1947, 40-5806; amd. Sec. 58, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (2) reduced from three to two the number of primary accounts; in (2)(b), after "life insurance", inserted "and annuity"; inserted (2)(b)(i) through (2)(b)(iii) outlining subaccounts; inserted second sentence of (3) that read: "Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association"; and made minor changes in style.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-204. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of five members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board may not otherwise be compensated by the association for their services. However, any designated representatives of members of the board who are not full-time employees of the member insurers that designated them may receive reasonable compensation for their services on the board of directors upon annual approval by the members of the association.

History: En. 40-5807 by Sec. 7, Ch. 245, L. 1974; R.C.M. 1947, 40-5807(part); amd. Sec. 3, Ch. 576, L. 1987.

33-10-205. General powers of association — standing. (1) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-228;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

(2) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(3) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(7), (8), (11).

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-206. Records of meetings and negotiations. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under this part. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under 33-10-209.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(2); amd. Sec. 140, Ch. 575, L. 1981.

33-10-207. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its insurance producers or employees, the association or its insurance producers or employees, members of the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. 40-5818 by Sec. 18, Ch. 245, L. 1974; R.C.M. 1947, 40-5818; amd. Sec. 1, Ch. 713, L. 1989.

33-10-208. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real property.

History: En. 40-5816 by Sec. 16, Ch. 245, L. 1974; R.C.M. 1947, 40-5816.

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-209. Examination of the association — annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: En. 40-5815 by Sec. 15, Ch. 245, L. 1974; R.C.M. 1947, 40-5815.

Cross-References

Examination by Commissioner, Title 33, ch. 1, part 4.

33-10-210. Unfair trade practice — notice to policyholders. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) Within 180 days after October 1, 1993, the association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract, unless subsection (4) applies. The document must be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the holder of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policy or contract holder that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policy or contract holder should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201(6)(a) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4).

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(5); amd. Sec. 59, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (2) through (5) regarding the legal description document, provision of notice of the document to the policyholder, and rulemaking authority to specify the notice form and content; and made minor changes in style.

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-10-211 through 33-10-214 reserved.

33-10-215. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(1).

Cross-References

Liquidation or rehabilitation proceedings, Title 33, ch. 2, part 13.

33-10-216. Plan of operation — delegation of powers provision. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-205(1)(c) and 33-10-227, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. 40-5810 by Sec. 10, Ch. 245, L. 1974; R.C.M. 1947, 40-5810; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules by Commissioner, 33-1-313.

33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(7) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of the impairment, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by other associations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part); amd. Sec. 17, Ch. 198, L. 1979; amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 60, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (1), before "impairments", inserted "insolvencies and" and after "impairments" substituted "the commissioner shall" for "the board of directors is given the following powers and duties"; inserted (1)(a) through (1)(d) and (2) regarding duties and powers of the Commissioner in aiding in detection and prevention of insurer insolvencies or impairments; in (3), (4), (5), (6), and (7), after "board", inserted "of directors"; inserted second sentence of (7) requiring the Board of Directors to cooperate with other states in preparing a report of insolvency of a particular insurer; and made minor changes in style.

33-10-218. Examination by commissioner — cost. (1) The commissioner may conduct the examination requested by the board pursuant to 33-10-217(4). The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons whom the commissioner designates. The cost of the examination must be paid by the association, and the examination report must be treated as are other examination reports.

(2) The examination report may not be released to the board of directors of the association prior to its release to the public, but this may not excuse the commissioner from the obligation to comply with subsection (4). The commissioner shall notify the board of directors when the examination is completed.

(3) The request for an examination must be kept on file by the commissioner, but it may not be open to public inspection prior to the release of the examination report to the public and must be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(4) The commissioner shall report to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part); amd. Sec. 61, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 at end of first sentence of (1) substituted "33-10-217(4)" for "33-10-217(2)"; and made minor changes in style.

33-10-219. Impaired insurer — association's powers prior to liquidation. If an insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(1) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer;

(2) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate this section and assure payment of the contractual obligations of the impaired insurer pending action under subsection (1); and

(3) loan money to the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(1), (2); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 4, Ch. 576, L. 1987.

Cross-References

Rehabilitation orders, 33-2-1332.

Liquidation orders, 33-2-1342.

33-10-220. Impaired insurer — association's powers during liquidation. (1) If an insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this part with respect to such domestic, foreign, or alien impaired insurer.

(3) In carrying out its duties under subsection (1), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and such liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(4) Before being obligated under subsection (1), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(5) The association shall have no liability under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

(6) (a) If proceeding under this section, the association may, with respect to life and health insurance policies:

(i) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred:

(A) with respect to group policies, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies;

(B) with respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or 1 year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies;

(ii) make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, 30 days' notice of the termination of the benefits provided; and

(iii) make available substitute coverage on an individual basis in accordance with subsection (6)(b) to each known insured, or owner if other than the insured, of an individual policy and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(b) (i) In providing the substitute coverage required under subsection (6)(a)(iii), the association may offer to reissue the terminated coverage or issue an alternative policy.

(ii) Reissued or alternative policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any reissued or alternative policy.

(c) (i) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt policies of various types for future reissuance without regard to any particular impairment or insolvency.

(ii) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Alternative policies issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(d) If the association elects to reissue terminated coverage at a premium different from that charged under the terminated policy, the premium must be set by:

(i) the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner; or

(ii) a court of competent jurisdiction.

(e) The association's obligation with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the policyholder, insured, or association.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(3) thru (6); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 5, Ch. 576, L. 1987.

Cross-References

Orders of rehabilitation, 33-2-1332.

Orders of liquidation, 33-2-1342.

33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or supervision of any member insurer.

(2) The liquidator, rehabilitator, or supervisor of any impaired insurer may notify all interested persons of the effect of this part.

History: En. 40-5811, 40-5813 by Secs. 11, 13, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(4), 40-5813; amd. Sec. 140, Ch. 575, L. 1981.

33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: En. 40-5819 by Sec. 19, Ch. 245, L. 1974; R.C.M. 1947, 40-5819; amd. Sec. 140, Ch. 575, L. 1981.

Cross-References

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

Order of rehabilitation, 33-2-1332.

Order of liquidation, 33-2-1342.

33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(9).

33-10-224. Extent of liability. The benefits for which the association may become liable may not exceed the lesser of:

(1) the contractual obligations of the impaired insurer for which the insurer becomes or would have become liable if it were not an impaired or insolvent insurer; or

(2) (a) with respect to any one life, regardless of the number of policies or contracts:

(i) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) $100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, $100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than $300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), $5 million in benefits, irrespective of the number of contracts held by that contract holder.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(10); amd. Sec. 6, Ch. 576, L. 1987; amd. Sec. 62, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 substituted present section regarding extent of association liability for former section that read: "The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(3), but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of $300,000."

33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(3).

Cross-References

Assets from liquidation, 33-2-1363.

33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or supervision proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(4); amd. Sec. 140, Ch. 575, L. 1981.

Cross-References

Assets from liquidation, 33-2-1363.

33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There are two classes of assessments, as follows:

(a) Class A assessments must be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account must be determined by the board. The amount of any Class B assessment must be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies.

(b) Class B assessments against member insurers for each account must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account may not in any one calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which the assessment is abated or deferred must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection

(3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974; R.C.M. 1947, 40-5809; amd. Sec. 7, Ch. 576, L. 1987; amd. Sec. 69, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (6) requiring assessment of subaccounts for the necessary additional amount sufficient to carry out association responsibilities under certain circumstances; and made minor changes in style.

33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions. (1) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(2) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(2), (3).

Cross-References

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's orders, 33-1-711.

Revocation or suspension of certificates of authority, 33-2-118, 33-2-119.

33-10-229. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(6); amd. Sec. 18, Ch. 198, L. 1979.

33-10-230. Tax — writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227(9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;
(b) 80% for the first calendar year after year of issuance;
(c) 60% for second calendar year after year of issuance;
(d) 40% for third calendar year after year of issuance;
(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227(7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part must be paid by the association to the commissioner and deposited by the commissioner with the state treasurer for credit to the general fund of this state.

History: En. 40-5817 by Sec. 17, Ch. 245, L. 1974; R.C.M. 1947, 40-5817; amd. Sec. 8, Ch. 576, L. 1987; amd. Sec. 70, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (1) substituted reference to 33-10-227(9) for reference to 33-10-227(8); in (3) substituted reference to 33-10-227(7) for reference to 33-10-227(6); and made minor changes in style.

Cross-References

Tax on premiums, 33-2-705.

CHAPTER 11

LIABILITY RISK RETENTION AND PURCHASING GROUPS

Part 1 — General Provisions

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Part 1

General Provisions

33-11-101. Purpose. The purpose of this part is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.).

History: En. Sec. 1, Ch. 249, L. 1987.

33-11-102. Definitions. As used in this part, the following definitions apply:

(1) "Domicile", for purposes of determining the state where a purchasing group is domiciled, means:

(a) for a corporation, the state where the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

(2) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) pay other obligations in the normal course of business.

(3) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(4) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) a business, whether profit or nonprofit, trade, product, service (including professional service), premises, or operation; or

(ii) an activity of any state or local government or an agency or political subdivision thereof.

(b) The term does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act (45 U.S.C. 51 through 60). As used in this subsection, "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subsection(4)(a).

(5) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:

(a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent this experience is reasonably available;

(c) pro forma financial statements and projections;

(d) appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state where the risk retention group is chartered.

(6) "Purchasing group" means a group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection(6)(c);

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation; and

(d) is domiciled in any state.

(7) "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

(b) that is organized for the primary purpose of conducting the activity described under subsection(7)(a);

(c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of that state. However, such group is considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability.

(A) For purposes of this subsection (7), "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by a person who performs that work or hires an independent contractor to perform that work and includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(B) For purposes of this subsection (7), "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

(d) that does not exclude any person from membership in the group solely to provide to members of the group a competitive advantage over such person;

(e) (i) that has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members and who are provided insurance by the risk retention group; or

(ii) that has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) whose members are engaged in businesses or activities that are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation;

(g) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group or member of such other group that is engaged in businesses or activities so that such group or member meets the requirement described in subsection(7)(f) for membership in the risk retention group that provides the reinsurance; and

(h) whose name includes the phrase "risk retention group".

(8) "State" means any state of the United States or the District of Columbia.

History: En. Sec. 2, Ch. 249, L. 1987.

33-11-103. Chartering — licensing — plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners' accounting practices and procedures manual.

History: En. Sec. 3, Ch. 249, L. 1987; amd. Sec. 63, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in first sentence of (1), near beginning after "licensed", substituted "to write only casualty insurance" for "as a casualty insurer"; inserted (2) through (4) regarding provision of certain charter information to the Commissioner and filing of the information with the Department and the national association; and made minor changes in style.

33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

(b) a copy of its plan of operation or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, the insurance producer shall report to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is used, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration.

History: En. Sec. 4, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 14, Ch. 451, L. 1993; amd. Sec. 64, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 451 inserted (12) regarding issuance of a proper certificate of registration; and made minor changes in style.

Chapter 596 substituted first sentence of (3)(a) regarding group liability for payment of premium taxes for "All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate"; in (3)(b), after "report", substituted "to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have" for "and pay the taxes for the premiums for risks that he has"; substituted (3)(c) regarding producer recordkeeping for former language that read: "To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state"; and made minor changes in style.

Chapter 451 and Ch. 596 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

Code Commissioner Correction: In (3)(c) the Code Commissioner substituted "33-1-408" for "33-1-403". Section 33-1-403 was repealed by Ch. 596, L. 1993. Section 33-1-408, enacted by Ch. 596, deals with the same subject matter as the repealed section. The authority for the correction is contained in sec. 84, Ch. 10, L. 1993.

33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state

may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1.

History: En. Sec. 5, Ch. 249, L. 1987; amd. Sec. 56, Ch. 10, L. 1993; amd. Sec. 65, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 at end of (2) deleted reference to Title 33, chapter 8; and made minor changes in style.

Chapter 596 at end of (2) deleted reference to Title 33, chapter 8; inserted (3) requiring that when insurance is purchased from an out-of-state insurer, risks may not be covered by a similar mechanism in this state; inserted (4) requiring that when insurance is purchased from an authorized insurer, only risks resident in this state may be covered by the state guaranty fund; and made minor changes in style.

33-11-106. Countersignature not required. A policy of insurance issued to a risk retention group or member of that group need not be countersigned as provided in 33-17-1111.

History: En. Sec. 6, Ch. 249, L. 1987.

33-11-107. Purchasing groups — exemption from certain laws relating to group purchase of insurance. A purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.) is exempt from any law of this state relating to the formation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws of this state.

History: En. Sec. 7, Ch. 249, L. 1987.

33-11-108. Notice and registration requirements of purchasing groups. (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled and all other states in which the group intends to do business;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus lines insurance producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, the requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group.

History: En. Sec. 8, Ch. 249, L. 1987; amd. Sec. 3, Ch. 180, L. 1991; amd. Sec. 15, Ch. 451, L. 1993; amd. Sec. 66, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 451 inserted (3) regarding issuance of a proper certificate of registration; and made minor changes in style.

Chapter 596 in (1)(a), after "domiciled", inserted "and all other states in which the group intends to do business"; and made minor changes in style.

33-11-109. Restriction on insurance purchased by purchasing groups. (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not authorized in the state where the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of that state.

(2) For purposes of subsection (1), the state where a purchasing group is located is each state where a member of the purchasing group has a risk resident, located, or to be performed.

(3) A purchasing group that obtains liability insurance from an insurer not admitted in this state or from a risk retention group shall inform each of the members of the group who have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all insurance laws and regulations of this state.

(4) A purchasing group may not purchase insurance that provides for a deductible or self-insured retention applicable to the group as a whole. Coverage may provide for a deductible or self-insured retention applicable to individual members.

(5) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance.

History: En. Sec. 9, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 67, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 near end of (1), after "producer", deleted "or broker"; inserted (3) requiring certain notification when liability insurance is obtained from an out-of-state insurer or risk retention group; inserted (4) precluding purchase of insurance that provides for a deductible or self-insured retention; and inserted (5) applying standards regarding aggregate limits.

33-11-110. Taxation of purchasing group. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid to surplus lines insurers and authorized insurers, pursuant to 33-2-311 and 33-2-705, respectively; and

(2) paid by the authorized or surplus lines insurers and, if not paid by them, paid by the insurance producer for the purchasing group and, if not paid by the insurance producer, paid by the purchasing group and, if not paid by the purchasing group, paid by each of its members.

History: En. Sec. 34, Ch. 596, L. 1993.

33-11-111 through 33-11-120 reserved.

33-11-121. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to use any powers established under this title to enforce the laws of this state so long as those powers are not specifically preempted by the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.). The commissioner's powers include but are not limited to the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

History: En. Sec. 10, Ch. 249, L. 1987.

33-11-122. Penalties. A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its license to do business in this state.

History: En. Sec. 11, Ch. 249, L. 1987.

33-11-123. Duty of insurance producers to obtain license. A person acting or offering to act as an insurance producer for a risk retention group or purchasing group that solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing such activity, obtain a license from the commissioner.

History: En. Sec. 12, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-11-124. Enforceability of orders issued in United States district court. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, territory, or possession of the United States upon a finding that such a group is in a hazardous financial condition is enforceable in the courts of this state.

History: En. Sec. 13, Ch. 249, L. 1987.

33-11-125. Rules and regulations. The commissioner may make and amend any reasonable rules relating to risk retention groups and purchasing groups necessary or desirable to carry out the provisions of this part.

History: **En. Sec. 14, Ch. 249, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTERS 12 AND 13

RESERVED

CHAPTER 14

INSURANCE PREMIUM FINANCE COMPANIES

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33-14-202. Investigation of applicant — qualifications — hearing.
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33-14-301. Premium finance agreements — contents — form — delivery.
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Part 1

General Provisions

33-14-101. Short title. This chapter may be cited as the "Insurance Premium Finance Company Act".

History: **En. Sec. 1, Ch. 360, L. 1981.**

33-14-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance agreements from insurance producers, brokers, or other premium finance companies.

(2) "Licensee" means a premium finance company holding a license issued by the commissioner under this chapter.

(3) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company

the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer or broker in payment of premiums on an insurance contract, together with a finance charge as authorized by this chapter, and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(4) "Unearned premium" means that part of the original premium, including a deposit, not yet earned by the insurer and therefore due the insured if a policy is canceled.

History: En. Sec. 2, Ch. 360, L. 1981; amd. Sec. 1, Ch. 123, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Part 2
Licensing

33-14-201. License required — fee — renewal of license. (1) Except as provided in subsection (4), a person may not engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee must be paid to the commissioner.

(3) The person to whom the license or the renewal of the license is issued shall file sworn answers, subject to the penalties of perjury, to any interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and the commissioner may, in the commissioner's discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if not satisfied that any officer, employee, stockholder, or partner who may materially influence the applicant's conduct meets the standards of this chapter.

(4) This section does not apply to and a license is not required of:

(a) savings and loan associations, banks, trust companies, licensed finance companies, credit unions, and resident insurance producers; or

(b) a person who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection (4).

History: En. Sec. 3, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 16, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 substituted present (4) regarding entities of whom a license is not required for former language that read: "No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance producer who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner"; and made minor changes in style.

Cross-References

Banks and trust companies, Title 32, ch. 1.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

33-14-202. Investigation of applicant — qualifications — hearing. (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state.

History: En. Sec. 4, Ch. 360, L. 1981.

33-14-203. License revocation — suspension. The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

(1) a license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) the company has violated any provisions of this chapter.

History: En. Sec. 5, Ch. 360, L. 1981.

33-14-204. Records required of licensees — form — inspection. (1) Every premium finance company shall maintain records of its premium finance transactions, and the records shall be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring such records as he may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form.

History: En. Sec. 6, Ch. 360, L. 1981.

Part 3

Operation and Regulation

33-14-301. Premium finance agreements — contents — form — delivery. (1) A premium finance agreement shall:

(a) be dated, signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion thereof shall be in at least 8-point type;

(b) contain the name and place of business of the insurance producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium therefor; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance (the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii));

(iv) the amount of the finance charge;

(v) the balance payable by the insured (the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)); and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in subsection (1)(c) need not be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement if the premium finance company and the insured enter into an open-end credit transaction, which is defined as a plan prescribing the terms of credit transactions that may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) The premium finance company or the insurance producer shall deliver to the insured or mail to him at his address shown in the agreement a complete copy of the agreement.

History: En. Sec. 7, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-14-302. Charges for premium financing regulated — method of computation. (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by this chapter.

(2) The finance charge must be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of $12.50 per premium finance agreement. The service charge of $12.50 need not be refunded upon cancellation or prepayment.

(4) An insured may prepay his premium finance agreement in full at any time prior to the due date of the final payment and in such event the unearned finance charge shall be refunded.

History: En. Sec. 8, Ch. 360, L. 1981.

33-14-303. Delinquency charges regulated. (1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of $1 to a maximum of 5% of the delinquent installment but not to exceed $5 on any installment that is in default for 5 days or more.

(2) If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for payment by the insured of a cancellation charge equal to the difference between any delinquency charge or default charge imposed with respect to the installment in default and $5. A premium finance agreement may also provide for the payment of attorney's fees and court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

History: En. Sec. 9, Ch. 360, L. 1981.

33-14-304. Cancellation of insurance upon default. (1) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than 10 days' written notice must be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance producer or broker indicated on the premium finance agreement shall also be mailed 10 days' notice of this action.

(3) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself but without requiring the return of the insurance contract. If the insurer or its insurance producer does not provide the insurance premium finance company with a specific mailing address for the purpose of receipt of the above notice, mailing by the insurance premium finance company to the insurer at the address that is on file and of record with the commissioner is considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last-known address and to the insurance producer or broker indicated on the premium finance agreement.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

History: En. Sec. 10, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-14-305. Return of unearned premiums. (1) Whenever a financed insurance contract is canceled by a person other than the insured, the insurer shall process cancellation of the financed insurance policy on a pro rata basis. The insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that a refund is not required if the excess amounts to less than $1.

History: En. Sec. 11, Ch. 360, L. 1981; amd. Sec. 2, Ch. 123, L. 1987; amd. Sec. 17, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (1), after "canceled", inserted "by a person other than the insured"; and made minor changes in style.

33-14-306. Agreement effective as security interest. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of the agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

History: En. Sec. 12, Ch. 360, L. 1981.

33-14-307. Exceptions. This chapter does not apply to any insurance company or insurance companies affiliated under the same management and control authorized to do business in this state which provide installment premium payments programs at no interest to policyholders or to an insurance producer licensed to do business in this state on policies written by the insurance producer or issued by the company or companies.

History: En. Sec. 13, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

CHAPTER 15

THE INSURANCE CONTRACT

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Chapter Cross-References

Evidence — admissibility of agreements, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Arbitration laws — nonapplicability, 27-5-114.

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Unfair trade practices, Title 33, ch. 18.

Part 1
Scope and Definitions

33-15-101. Scope. Parts 1 through 5 do not apply as to:

(1) reinsurance;

(2) policies or contracts not issued for delivery in this state or delivered in this state;

(3) ocean marine and foreign trade insurances;

(4) title insurance, except as to the following provisions: 33-15-102, 33-15-103, 33-15-303, 33-15-305, 33-15-306, 33-15-307, 33-15-316, and 33-15-411.

History: En. Sec. 258, Ch. 286, L. 1959; R.C.M. 1947, 40-3701; amd. Sec. 17, Ch. 303, L. 1981.

Cross-References

Ocean marine insurance — definition, 33-1-209.

Title insurance — definition, 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-15-102. Definitions. (1) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached thereto and a part thereof.

(2) "Premium" is the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

History: En. Secs. 259, 260, Ch. 286, L. 1959; R.C.M. 1947, 40-3702, 40-3703.

Cross-References

Premium — exception of placement fee — state compensation insurance fund, 33-18-212.

33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body, or health or any contract such minor effected upon his own property, liabilities, or other

interests or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2) above is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums except as and when consented to by the guardian and approved by the district court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under 33-15-201.

History: En. Sec. 267, Ch. 286, L. 1959; R.C.M. 1947, 40-3710; amd. Sec. 147, Ch. 575, L. 1981.

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

Minors — acquittance and discharge, 33-15-502.

Avoidance of contracts by minors, 41-1-304.

Part 2

Insurable Interests

33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual.

History: En. Sec. 261, Ch. 286, L. 1959; R.C.M. 1947, 40-3704; amd. Sec. 148, Ch. 575, L. 1981; amd. Sec. 3, Ch. 670, L. 1991.

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

Secured transactions — exclusion, 30-9-104.

Homicide — effect on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

Personal representatives — actions by, 72-3-613.

Gift policies to minors, 72-26-603.

33-15-202 through 33-15-204 reserved.

33-15-205. Restrictions on property insurance — interest. (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

History: En. Sec. 262, Ch. 286, L. 1959; R.C.M. 1947, 40-3705.

33-15-206. Interest of named insured — change of interest on death — transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to his own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking his interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

History: En. Secs. 263, 264, 265, Ch. 286, L. 1959; R.C.M. 1947, 40-3706, 40-3707, 40-3708.

33-15-207. Insurance without interest or of wager — void. (1) Every stipulation in a policy of insurance of property for the payment of loss without regard to absence of an insurable interest in such property on the part of the insured or that the policy shall be received as proof of such interest is void.

(2) Every policy executed by way of gaming or wagering is void.

History: En. Sec. 266, Ch. 286, L. 1959; R.C.M. 1947, 40-3709.

Part 3
Policy Provisions

Part Cross-References

Unfair trade practices, Title 33, ch. 18.

Crop hail insurance, Title 80, ch. 2, part 2.

33-15-301. Requiring standard provisions — waiver. (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

(a) he finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) the policy is otherwise approved by him.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) No such provision, if required to be contained in the policy, can be waived by agreement between the insurer and any other person.

History: En. Sec. 273, Ch. 286, L. 1959; R.C.M. 1947, 40-3716.

Cross-References

Approval of forms, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

33-15-302. Policy must contain entire contract. The policy, when issued, shall contain the entire contract between the parties, and neither the insurer or any insurance producer or representative thereof nor any person insured thereunder shall make any agreement as to the insurance which is not plainly expressed in the policy. This provision shall not be deemed to prohibit the modification of a policy, after issuance, by written rider or endorsement duly issued by the insurer.

History: En. Sec. 274, Ch. 286, L. 1959; R.C.M. 1947, 40-3717; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

When several contracts taken together, 28-3-203.

33-15-303. Contents of policies in general — identification. (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance under the policy takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid must be included.

(3) All policies and annuity contracts issued by insurers and the forms of policies and annuity contracts filed with the commissioner must have printed on the policy or annuity contract an appropriate designating letter or figure, combination of letters or figures, or terms identifying the respective forms of policies or contracts, together with the year of adoption of the form. Whenever any change is made in any form, the designating letters, figures, or terms and year of adoption on the form must be correspondingly changed.

History: En. Sec. 275, Ch. 286, L. 1959; R.C.M. 1947, 40-3718; amd. Sec. 18, Ch. 303, L. 1981; amd. Sec. 18, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 deleted former (3) that read: "Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies"; and made minor changes in style.

Cross-References

Group insurance, Title 33, ch. 20, parts 10 through 12; Title 33, ch. 22, part 5.

Surety insurance, Title 33, ch. 26.

33-15-304. Permissible content. A policy may contain additional provisions not inconsistent with this code and which are:

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

History: En. Sec. 276, Ch. 286, L. 1959; R.C.M. 1947, 40-3719.

33-15-305. Prohibited content — charter or bylaws. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer, other than the subscribers' agreement or power of attorney of a reciprocal insurer, a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

History: En. Sec. 277, Ch. 286, L. 1959; R.C.M. 1947, 40-3720.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Power of attorney — reciprocal insurer, 33-5-301.

33-15-306. Execution of policies — facsimile signature. (1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution

thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

History: **En. Sec. 278, Ch. 286, L. 1959; R.C.M. 1947, 40-3721.**

33-15-307. Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue and shall be jointly and severally liable on an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department, and such policy shall plainly show the true name of the insurer.

(2) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(a) that the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy; and

(b) that service of process or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to cosurety obligations.

History: **En. Sec. 279, Ch. 286, Ch. 1959; R.C.M. 1947, 40-3722.**

33-15-308 through 33-15-314 reserved.

33-15-315. Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

History: **En. Sec. 281, Ch. 286, L. 1959; R.C.M. 1947, 40-3724.**

33-15-316. Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application which is a part of the policy.

History: **En. Sec. 282, Ch. 286, L. 1959; R.C.M. 1947, 40-3725.**

33-15-317. Insurance coverage of punitive damages. (1) Insurance coverage does not extend to punitive or exemplary damages unless expressly included by the contract of insurance.

(2) Prior to renewal of any policy in effect on October 1, 1987, the insurer shall provide the insured with notice of nonrenewal of coverage of punitive or exemplary damages in the same manner as required by the commissioner of insurance for the renewal of policies with altered terms.

History: **En. Sec. 3, Ch. 627, L. 1987.**

Cross-References

Punitive damages — when allowed, 27-1-220.

Punitive damages — liability — proof — award, 27-1-221.

33-15-318. *(Effective January 1, 1994)* **Safety program requirement in workers' compensation policies.** A policy, contract, or agreement to insure an employer against a workers' compensation or occupational disease risk must require each insured employer to implement a safety program, as provided in 39-71-1507, as part of the policy, contract, or agreement to provide workers' compensation or occupational disease insurance coverage.

History: En. Sec. 11, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

33-15-319 and 33-15-320 reserved.

33-15-321. Life and disability insurance policy language simplification. Sections 33-15-321 through 33-15-329 may be cited as the "Life and Disability Insurance Policy Language Simplification Act".

History: En. Sec. 1, Ch. 302, L. 1981.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

33-15-322. Purpose. (1) The purpose of 33-15-321 through 33-15-329 is to establish minimum standards for language used in policies, contracts, and certificates of life, disability, credit life, and credit disability insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.

(2) Sections 33-15-321 through 33-15-329 are not intended to increase the risk assumed by insurance companies or other entities subject to 33-15-321 through 33-15-329 or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, disability, credit life, or credit disability insurance policies. Sections 33-15-321 through 33-15-329 are not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

History: En. Sec. 2, Ch. 302, L. 1981.

33-15-323. Definitions. As used in 33-15-321 through 33-15-329, the following definitions apply:

(1) "Company" or "insurer" means any life or disability insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar types of organizations.

(2) "Policy" or "policy form" means any:

(a) policy, contract, plan, or agreement of life or disability insurance, including credit life and credit disability insurance, delivered or issued for delivery in this state by any company subject to 33-15-321 through 33-15-329;

(b) certificate, contract, or policy issued by a fraternal benefit society; and

(c) certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

History: En. Sec. 3, Ch. 302, L. 1981.

33-15-324. Application — exceptions. (1) Sections 33-15-321 through 33-15-329 apply to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under

33-15-321 through 33-15-329, but nothing in 33-15-321 through 33-15-329 applies to:

(a) a policy which is a security subject to federal jurisdiction;

(b) a group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy, but a certificate issued pursuant to a group policy delivered or issued for delivery in this state is not exempt;

(c) a group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(d) a form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under 33-15-321 through 33-15-329; or

(e) the renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under 33-15-321 through 33-15-329.

(2) Sections 33-15-321 through 33-15-329 provide the exclusive manner for determining language simplification standards for any policy forms.

(3) A non-English language policy delivered or issued for delivery in this state is in compliance with 33-15-325(1)(a) if the insurer certifies that the policy is translated from an English language policy which complies with 33-15-325(1)(a).

History: En. Sec. 4, Ch. 302, L. 1981.

33-15-325. Minimum policy language simplification standards. (1) In addition to any other requirements of law, no policy form, except as stated in 33-15-324, may be delivered or issued for delivery in this state on or after the date such form must be approved under 33-15-321 through 33-15-329, unless:

(a) the text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);

(b) it is printed, except for specification pages, schedules, and tables, in not less than 10-point type, 1-point leaded;

(c) the style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(d) it contains a table of contents or an index of the principal sections of the policy if the policy has more than 3,000 words printed on three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

(2) For the purposes of this section, a Flesch reading ease test score is measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire form is analyzed. For policy forms containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples must be separated by at least 20 printed lines.

(b) The number of words and sentences in the text is counted and the total number of words is divided by the total number of sentences. The figure obtained is multiplied by a factor of 1.015.

(c) The total number of syllables is counted and divided by the total number of words. The figure obtained is multiplied by a factor of 84.6.

(d) The sum of the figures computed under (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of subsections (2)(b), (c), and (d), the following procedures are used:

(i) a contraction, hyphenated word, or numbers and letters, if separated by spaces, are counted as one word;

(ii) a unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence; and

(iii) a syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this section includes all printed matter except the following:

(i) the name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules, or tables; and

(ii) policy language which is drafted to conform to the requirements of a federal law, regulation, or agency interpretation; policy language required by a collectively bargained agreement; medical terminology; words which are defined in the policy; and policy language required by law or regulation. The insurer must identify the language or terminology excepted by this subsection and certify in writing that the language or terminology is entitled to be excepted by this subsection.

(3) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

(4) Filings subject to this section must be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with 33-15-327. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(5) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

History: En. Sec. 5, Ch. 302, L. 1981.

33-15-326. Construction — time period. Nothing in 33-15-321 through 33-15-329 may be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

History: En. Sec. 6, Ch. 302, L. 1981.

33-15-327. Powers of the commissioner. The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-325(1)(a) whenever, in his sole discretion, he finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

History: En. Sec. 7, Ch. 302, L. 1981.

33-15-328. Approval of forms. A policy form meeting the requirements of 33-15-325(1)(a) may be approved by the commissioner notwithstanding the provisions of other laws that specify content of policies if the approved policy form provides policyholders and claimants protection not less favorable than they would be entitled to under such laws.

History: En. Sec. 8, Ch. 302, L. 1981.

33-15-329. Applicability schedule. (1) Except as provided in 33-15-324, 33-15-321 through 33-15-329 apply to all policy forms filed on or after July 1, 1983. No policy form may be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under 33-15-321 through 33-15-329. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by 33-15-321 through 33-15-329 need not be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in 33-15-325(4).

(2) The commissioner may, in his sole discretion, extend the dates in subsection (1).

History: En. Sec. 10, Ch. 302, L. 1981.

33-15-330 through 33-15-332 reserved.

33-15-333. Short title. Sections 33-15-333 through 33-15-340 may be cited as the "Property and Casualty Insurance Policy Language Simplification Act".

History: En. Sec. 1, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-334. Purpose. (1) The purpose of 33-15-333 through 33-15-340 is to establish minimum language and format standards to make property and casualty policies easier to read.

(2) Sections 33-15-333 through 33-15-340 are not intended to increase the risk assumed under policies subject to 33-15-333 through 33-15-340. Sections 33-15-333 through 33-15-340 are not intended to impede flexibility and innovation in the development of policy forms or content. Sections 33-15-333 through 33-15-340 do not grant authority to the commissioner to mandate the standardization of policy forms or content.

History: En. Sec. 2, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-335. Definitions. As used in 33-15-333 through 33-15-340, the following definitions apply:

(1) "Casualty insurance" does not include accident and health or disability insurance.

(2) "Policy" or "policy form" means any written contract of property or casualty insurance delivered or issued for delivery in this state by or on behalf of any insurer licensed in this state.

History: En. Sec. 3, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-336. Applicability. (1) Other statutes of this state setting simplification standards for language or format do not apply to property and casualty policies.

(2) Sections 33-15-333 through 33-15-340 do not apply to policies in manuscript form or to the following kinds of insurance:

(a) ocean marine;

(b) surety and financial institution bonds;

(c) reinsurance; or

(d) commercial aviation.

(3) A non-English policy is considered in compliance with 33-15-337 if it was translated from an English policy that complies with 33-15-337.

History: En. Sec. 4, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-337. Minimum policy simplification standards. (1) All property and casualty policies subject to 33-15-333 through 33-15-340 must take into consideration the following factors:

(a) use of simple sentence structure, short sentences, and personal style;

(b) use of commonly understood words and everyday conversational language consistent with the policy's standing as a contract;

(c) avoidance of use of technical and legal terms and words with special meanings whenever possible;

(d) minimal reference to other sections or provisions of the policy;

(e) logical organization of text; and

(f) legibility.

(2) The policy must include a table of contents and notice section of important provisions.

(3) Each section must be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(4) The policy, except for declarations pages, schedules, and tables, must be printed in not less than 10-point type, 1-point leaded.

(5) The policy must be printed in a legible type style, with adequate contrast between ink and paper. Captions, headings, and spacings must be used to increase overall legibility.

(6) Policy exclusions may use technical terms, terms with special meanings, and court-interpreted terms to ensure policy clarity.

(7) Technical terms and words with special meanings must be avoided whenever possible.

(8) The policy text must achieve a minimum score of 40 on the Flesch reading ease test, an equivalent score on a comparable test, or a lower score on either if the commissioner finds the policy reasonably easy to read. For purposes of this section, a Flesch reading ease test must be scored by the following method:

(a) For a policy containing 10,000 words or less, the entire policy must be analyzed. For a policy containing more than 10,000 words, the readability of two 100-word samples per page may be analyzed instead. The samples must be separated by at least 20 printed lines.

(b) The total number of words in the text or sample must be divided by the total number of sentences. The figure obtained must be multiplied by 1.015.

(c) The total number of syllables in the text or sample must be divided by the total number of words. The figure obtained must be multiplied by 84.6.

(d) The sum of the figures computed under subsections (8)(b) and (8)(c) subtracted from 206.835 equals the Flesch reading ease test score.

(9) (a) For purposes of subsection (8), the following procedures must be used:

(i) A contraction, hyphenated word, number, and letter, when separated by spaces, are counted as one word.

(ii) A unit of text ending with a period, semicolon, or colon is counted as a sentence.

(iii) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. When the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(iv) At the option of the insurer, a form made a part of the policy may be scored separately or as part of the policy.

(b) The term "text", as used in this section, includes all printed matter except:

(i) the name and address of the insurer;

(ii) the name, number, or title of the policy or form;

(iii) the table of contents or index;

(iv) headings and captions; and

(v) declarations pages, schedules, or tables.

History: En. Sec. 5, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-338. Powers of commissioner. (1) At the commissioner's discretion, the commissioner may extend any dates under 33-15-333 through 33-15-340.

(2) The commissioner has sole authority to enforce the provisions of 33-15-333 through 33-15-340 or to seek remedies for its violation.

(3) The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-337 when, in the commissioner's discretion, a lower score:

(a) will provide a more accurate reflection of the readability of a policy;

(b) is warranted by the nature of a particular policy or type or class of policy; or

(c) is caused by certain policy language that is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

History: En. Sec. 6, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-339. Compliance with other statutorily required language. The requirements of any other laws that specify the language or content of a policy may be met by a policy complying with the provisions of 33-15-337. However, the policy must provide protection that, considered as a whole, is not less favorable to the insured than is required by the other laws.

History: En. Sec. 7, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-340. Liability and coverage not imputed. The existence or nonexistence of coverage or liability under a policy may not be construed from policy approval by the commissioner.

History: En. Sec. 8, Ch. 416, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

Part 4

Application, Issuance, Renewal, and Assignment

33-15-401. Application required — life and disability insurance. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of or pertaining to such minor.

(3) Family policies insuring any two or more members of a family may be issued on an application signed by either parent, a stepparent, or by a husband or wife.

History: En. Sec. 268, Ch. 286, L. 1959; R.C.M. 1947, 40-3711.

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

33-15-402. Application as evidence — copy to insured — alteration. (1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 30 days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

(4) No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

History: En. Sec. 269, Ch. 286, L. 1959; R.C.M. 1947, 40-3712.

Cross-References

Evidence, admissibility of agreements, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Nonadmissibility of liability insurance, Rule 411, M.R.Ev. (see Title 26, ch. 10).

Industrial life insurance policies defined, 33-20-102.

33-15-403. Representations in applications — recovery precluded if fraudulent or material. (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations therefor by or in behalf of the insured or annuitant shall be deemed to be representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(a) fraudulent;

(b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

History: **En. Sec. 270, Ch. 286, L. 1959; R.C.M. 1947, 40-3713.**

Cross-References

Fraud, misrepresentation, or mistake — contract rules, Title 28, ch. 2, part 4.

33-15-404 through 33-15-410 reserved.

33-15-411. Binders for temporary insurance. (1) Binders or other contracts for temporary insurance may be made orally or in writing and shall be deemed to include all the usual terms of the policy as to which the binder was given, together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given or beyond 90 days from its effective date, whichever period is the shorter.

(3) If the policy has not been issued, a binder may be extended or renewed beyond such 90 days with the written approval of the insurer.

(4) This section shall not apply to life or disability insurance.

History: **En. Sec. 283, Ch. 286, L. 1959; R.C.M. 1947, 40-3726.**

33-15-412. Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle or aircraft, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy or memorandum thereof containing the same such information shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum.

History: **En. Sec. 284, Ch. 286, L. 1959; R.C.M. 1947, 40-3727.**

33-15-413. Renewal by certificate. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor, for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy.

History: En. Sec. 285, Ch. 286, L. 1959; R.C.M. 1947, 40-3728.

33-15-414. Assignment. (1) A policy or group certificate issued thereunder may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to July 1, 1971.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971; R.C.M. 1947, 40-3729.

Part 5

Claims and Benefits

33-15-501. Payment discharges insurer — notice to contrary. Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract or the exercise of any right or privilege thereunder and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

History: En. Sec. 287, Ch. 286, L. 1959; R.C.M. 1947, 40-3730.

Cross-References

Extinction of contractual obligation by performance, Title 28, ch. 1, part 11.

Destruction of property to defraud insurer — crime, 45-6-101.

33-15-502. Minor may give acquittance. (1) Any minor domiciled in this state who has attained the age of 16 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding $3,000 in any one year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, provided such policy, contract, or agreement shall provide for the payment or payments to such minor and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in 33-15-103.

(2) This section shall not be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.

History: En. Sec. 288, Ch. 286, L. 1959; R.C.M. 1947, 40-3731.

Cross-References

Contractual capacity of minors, Title 41, ch. 1, part 3.

33-15-503. Forms for proof of loss to be furnished. An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

History: En. Sec. 289, Ch. 286, L. 1959; R.C.M. 1947, 40-3732.

Cross-References

Multiple proofs required — unfair trade practice, 33-18-201.

33-15-504. Claims administration not waiver. Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) acknowledgment of the receipt of notice of loss or claim under the policy;

(2) furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted;

(3) investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

History: En. Sec. 290, Ch. 286, L. 1959; R.C.M. 1947, 40-3733.

33-15-505 through 33-15-510 reserved.

33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; except that, subject to the statute of limitations, the amount of any premiums for such insurance paid with intent to defraud creditors with interest thereon shall enure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability thereof by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount so claimed.

(2) For the purposes of subsection (1) above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

History: En. Sec. 291, Ch. 286, L. 1959; R.C.M. 1947, 40-3734.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Statutes of Limitation, Title 27, ch. 2.

33-15-512. Exemption from execution of proceeds of group life — exception. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance issued pursuant to parts 10, 11, and 12 of chapter 20 to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

History: En. Sec. 292, Ch. 286, L. 1959; R.C.M. 1947, 40-3735.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Bankruptcy proceedings — proceeds as exempt property, 31-2-106.

33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

History: **En. Sec. 293, Ch. 286, L. 1959; R.C.M. 1947, 40-3736.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights. (1) The benefits, rights, privileges, and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant shall not be subject to execution, nor shall the annuitant be compelled to exercise any such rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant shall not at any time exceed $250 per month for the length of time represented by such installments and that such periodic payments in excess of $350 per month shall be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant shall at any time exceed payment at the rate of $350 per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract so provides, the benefits, rights, privileges, or options accruing under such contract to a beneficiary or assignee shall not be transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained herein for the annuitant shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives or for a specified term or terms.

History: **En. Sec. 294, Ch. 286, L. 1959; R.C.M. 1947, 40-3737.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Bankruptcy proceedings — proceeds as exempt property, 31-2-106.

Parts 6 through 10 reserved

Part 11

Premium Changes and Cancellation Property or Casualty Insurance

Part Cross-References

Casualty insurance, Title 33, ch. 23.

Property insurance, Title 33, ch. 24.

33-15-1101. Purpose — applicability. (1) The purpose of this part is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

(a) regulating the grounds for midterm cancellation of an insurance policy;

(b) prohibiting midterm increases in premiums;

(c) increasing the opportunity for insureds to shop for replacement or substitute insurance;

(d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) increasing the opportunity for insurance producers to compete freely.

(2) This part applies to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.

(3) This part does not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by this part. The rights provided by this part are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules.

History: En. Sec. 1, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-15-1102. Definitions. As used in this part, the following definitions apply unless the context requires otherwise:

(1) "Anniversary date" means the month and day that rates, rating plans, and rating systems are initially applied to a policy in effect. The term includes each annual anniversary thereafter unless the insurer establishes a different date by a filing with the commissioner.

(2) "Cancellation" means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.

(3) "Classification" means an arrangement of insurance risks into an underwriting or rating group according to a classification system used by an insurer as a basis for tabulating statistical experience and determining premium rates.

(4) "Classification system" means a schedule of classifications and a rule used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means an insurer authorized to transact property or casualty insurance in this state or an unauthorized insurer transacting surplus lines insurance in this state.

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time, regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule used by an insurer to calculate:

(a) the premium for an insured; and

(b) the parameter values used in such calculation after application of classification premium rates to units of exposure.

(9) "Renewal" means an agreement between an insurer and an insured to extend or continue an existing insurance policy for 90 days or more.

History: En. Sec. 2, Ch. 120, L. 1987; amd. Sec. 4, Ch. 180, L. 1991.

33-15-1103. Midterm cancellation. (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except:

(a) for reasons specifically allowed by statute;

(b) for failure to pay a premium when due; or

(c) on grounds stated in the policy which pertain to the following:

(i) material misrepresentation;

(ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;

(iii) substantial breaches of contractual duties, conditions, or warranties;

(iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;

(v) financial impairment of the insurer; or

(vi) any other reason approved by the commissioner.

(2) Cancellation under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.

(3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until 10 days after the notice is delivered or mailed to the insured.

(4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:

(a) for reasons specifically allowed by statute;

(b) for failure to pay a premium when due; or

(c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).

History: En. Sec. 3, Ch. 120, L. 1987.

33-15-1104. Anniversary cancellation — anniversary rate increases. (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice 30 days prior to an anniversary date.

(2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy.

History: En. Sec. 4, Ch. 120, L. 1987.

33-15-1105. Nonrenewal — renewal premium. (1) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

History: En. Sec. 5, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-15-1106. Renewal with altered terms. (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least 30 days before the expiration date. If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate the earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date.

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against.

History: En. Sec. 6, Ch. 120, L. 1987; amd. Sec. 4, Ch. 699, L. 1991.

33-15-1107. Information about grounds for nonrenewal. (1) If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured. A notice is not effective unless it contains adequate information about the insured's right to make the request.

(2) This section does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and the notice so states.

History: En. Sec. 7, Ch. 120, L. 1987.

33-15-1108 through 33-15-1110 reserved.

33-15-1111. Homeowner insurance not affected by day-care operations. (1) No insurer writing homeowner insurance in this state may deny an applicant homeowner insurance or cancel or refuse to renew a homeowner insurance policy covering a dwelling located in this state for the principal reason that an insured under the policy operates at the insured location a day-care facility, as defined in 52-2-703, that satisfies the requirements of 52-2-723 or 52-2-724.

(2) This section does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of an insured's business pursuits, including those related to the operation of a day-care facility.

History: En. Sec. 8, Ch. 120, L. 1987.

Cross-References

Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty, 33-23-401.

33-15-1112 through 33-15-1120 reserved.

33-15-1121. Unfair trade practices. (1) The failure of an insurer to comply with this part constitutes an unfair trade practice under 33-18-1003.

(2) Midterm premium increases and policy coverage reductions not in compliance with this part that are attempted or executed constitute unfair trade practices under 33-18-1003.

History: En. Sec. 9, Ch. 120, L. 1987.

CHAPTER 16

RATES — RATING AND ADVISORY ORGANIZATIONS

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Chapter Cross-References

Additional penalties for violation of chapter, 33-22-911.

Part 1
General Provisions

33-16-101. Purpose and intent. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in ratemaking and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969; R.C.M. 1947, 40-3634.

33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

(2) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(3) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans, or rating systems and which do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Subscriber" means an insurer which is furnished at its request with rates and rating manuals by a rating organization of which it is not a member or with advisory services by an advisory organization of which it is not a member.

(5) "Willful" or "willfully", in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Secs. 2, 3, 4, 5, Ch. 362, L. 1969; R.C.M. 1947, 40-3635, 40-3636, 40-3637, 40-3638.

33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter applies to:

(1) life insurance;

(2) disability insurance, except medicare supplement insurance subject to the provisions of chapter 22, part 9;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; or

(6) surplus lines insurance as defined in 33-2-301.

History: En. Sec. 6, Ch. 362, L. 1969; amd. Sec. 1, Ch. 558, L. 1977; R.C.M. 1947, 40-3639; amd. Sec. 1, Ch. 126, L. 1981; amd. Sec. 1, Ch. 400, L. 1989; amd. Sec. 1, Ch. 682, L. 1989.

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969; R.C.M. 1947, 40-3666.

33-16-105. Maintenance of records. Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: **En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(1).**

33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees — expense. (1) (a) The commissioner may, as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. The commissioner may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance.

(b) In lieu of an examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state or by the national association of insurance commissioners.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether an organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether the insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable to it. The examination may not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, insurance producers, and employees of any organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by an organization, group, association, or insurer in the conduct of the operations to which the examination relates.

(4) The reasonable cost of any examination authorized by this article must be paid by the organization, group, association, or insurer to be examined.

History: **En. Secs. 22, 23, 24, 25, Ch. 362, L. 1969; R.C.M. 1947, 40-3655, 40-3656, 40-3657, 40-3658; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 19, Ch. 451, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (1)(a), after "commissioner", deleted "shall, at least once every 5 years"; at end of (1)(b) inserted "or by the national association of insurance commissioners"; and made minor changes in style.

33-16-107. Information not to be willfully withheld. No person, insurer, or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner or to any rating organization, advisory organization, insurer, or group, association, or other organization of insurers which will affect the rates, rating systems, or premiums for the classes of insurance to which the provisions of this chapter are applicable.

History: **En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(a).**

Cross-References

Penalties for violation of Montana Insurance Code — general provision, 33-1-104.

Penalty for violation of chapter, 33-16-114.

33-16-108 through 33-16-110 reserved.

33-16-111. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).

Cross-References

Hearings by Commissioner, 33-1-701.

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

Unfair trade practices, Title 33, ch. 18.

33-16-112. Failure to comply with order — suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113.

History: En. Sec. 30, Ch. 362, L. 1969; R.C.M. 1947, 40-3663.

Cross-References

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

33-16-113. Appeal from order or decision of commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside or has his principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969; R.C.M. 1947, 40-3664.

Cross-References

Judicial appeals of contested administrative proceedings, 2-4-702.

Appeals from Commissioner, 33-1-711.

33-16-114. Penalty. (1) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding $50. If such failure be willful, he or it shall be liable to the state in an amount not exceeding $5,000 for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(b), (c).

Cross-References

Actions by state agencies — notification of Attorney General required, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

33-16-115. Acts done by authority of chapter not violation of other laws. No act done, action taken, or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969; R.C.M. 1947, 40-3667.

Cross-References

Unlawful price fixing, 30-14-205.

33-16-116. Administration or enforcement — supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969; R.C.M. 1947, 40-3668.

Part 2

Rates and Rating Plans

33-16-201. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

(b) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(c) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same or unless such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which such experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is 3 years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973; R.C.M. 1947, 40-3640.

33-16-202. Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969; R.C.M. 1947, 40-3669.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules by Commissioner, 33-1-313.

33-16-203. Rates filed. (1) Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

(2) In accordance with 33-16-222, rates filed must provide for a premium reduction to qualified insured operators 55 years of age or older.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(2); amd. Sec. 1, Ch. 241, L. 1979; amd. Sec. 7, Ch. 49, L. 1987.

33-16-204. Review of rates on request by aggrieved person. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in 33-16-205.

History: En. Sec. 26, Ch. 362, L. 1969; R.C.M. 1947, 40-3659.

Cross-References

Public documents open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-16-205. Noncompliance of rates — notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that such insurer, organization, group, or association or any rate, rating plan, or rating system made or used by any such insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group, or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.

History: En. Sec. 27, Ch. 362, L. 1969; R.C.M. 1947, 40-3660.

33-16-206. Hearings — notice — subject of hearing. (1) If the commissioner has good cause to believe such noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group, or association. If no notice has been given as provided in 33-16-205, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing shall not include any additional subjects not specified in the notices required by 33-16-205 or this section.

History: En. Sec. 28, Ch. 362, L. 1969; R.C.M. 1947, 40-3661.

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-207 through 33-16-210 reserved.

33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).

33-16-212 through 33-16-220 reserved.

33-16-221. Short title. Sections 33-16-221 through 33-16-225 may be cited as the "Mature Defensive Driving Act".

History: En. Sec. 1, Ch. 49, L. 1987.

33-16-222. Requirement for rate reduction. (1) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for an insured operator of a covered vehicle who is 55 years of age or older and who has successfully completed a highway traffic safety program as provided by 61-2-102 and 61-2-103.

(2) Any discount used by the insurer is presumed appropriate unless credible data demonstrates otherwise.

History: En. Sec. 2, Ch. 49, L. 1987.

33-16-223. Effective period of reduction. (1) The premium reduction required by 33-16-222 is effective for an insured for a 2-year period after successful completion of the approved course. Each person shall take an approved course every 2 years in order to continue to be eligible for the reduction in premium required by 33-16-222.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which he is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation; or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation.

History: En. Secs. 3, 6, Ch. 49, L. 1987.

33-16-224. Certificate. The organization offering the approved course shall issue a certificate to each person who successfully completes the course, which qualifies him for the premium discount required by 33-16-222.

History: En. Sec. 4, Ch. 49, L. 1987.

33-16-225. When discount not applicable. The provisions of 33-16-222 do not apply if the approved course is taken as punishment specified by a court or other governmental entity for a moving traffic violation.

History: En. Sec. 5, Ch. 49, L. 1987.

33-16-226 through 33-16-230 reserved.

33-16-231. Short title. Sections 33-16-231 through 33-16-236 may be cited as the "Ratemaking Act".

History: En. Sec. 2, Ch. 400, L. 1989.

33-16-232. Purpose. Sections 33-16-231 through 33-16-236 are intended to ensure that rates for policies insuring exposures in Montana are based as much as possible on claims resulting from exposures in Montana and that they are not excessive, inadequate, or unfairly discriminatory. It is further intended that 33-16-231 through 33-16-236 provide authorization and procedures for insurers to combine experience for a particular policy in this state with experience for similar policies elsewhere in Montana or in other states to obtain statistics that are sufficiently stable for loss projection purposes.

History: En. Sec. 3, Ch. 400, L. 1989.

33-16-233. Definitions. As used in 33-16-231 through 33-16-236, a line of insurance is considered "noncompetitive" if only a small number of insurers are willing to transact the line in Montana and is considered "volatile" if the line has a low volume of claims in Montana.

History: En. Sec. 4, Ch. 400, L. 1989.

33-16-234. Duties of commissioner pertaining to noncompetitive or volatile lines. (1) To implement the provisions of 33-16-235 and 33-16-236, the commissioner shall:

(a) designate by rule which lines of insurance are covered because they are noncompetitive or volatile, as defined in 33-16-233;

(b) require by rule that each insurer transacting a line of insurance designated as noncompetitive or volatile report historical exposure, loss, and expense data; and

(c) review rate filings for a line of insurance designated as noncompetitive or volatile to determine, after a hearing, whether the filing insurer's statistics in Montana are sufficiently stable for ratemaking purposes.

(2) If a filing insurer's statistics are not sufficiently stable for all or part of the ratemaking process and if the commissioner determines the combined experience from similar policies written in Montana will not produce statistics sufficiently stable for ratemaking purposes, the commissioner shall review the experience under the covered policy in other states and determine which states' experiences are appropriate and necessary to include with experience in this state to obtain statistics that are sufficiently stable for ratemaking purposes.

(3) The commissioner shall determine the states whose experiences are appropriate and necessary based on:

(a) the number of claims filed as measured by insurance frequency statistics;

(b) the average claim size as measured by insurance severity statistics;

(c) the differences in civil justice systems or insurance regulatory systems as measured by insurance pure premium statistics; and

(d) other considerations that impact costs, such as demographic composition and economic conditions.

History: En. Sec. 5, Ch. 400, L. 1989.

33-16-235. Data reporting — rules. (1) An insurer that has transacted a line of insurance designated as noncompetitive or volatile shall report once a year to the commissioner, on forms prescribed by the commissioner, information including:

(a) reported and estimated ultimate exposure, by year of exposure to loss;

(b) reported and estimated ultimate premiums, by year of exposure to loss;

(c) losses paid, by year incurred;

(d) loss adjustment expense paid, by year incurred;

(e) reported and ultimately incurred losses and loss adjustment expenses, by year incurred; and

(f) any other information required by the commissioner.

(2) An insurer transacting a line of insurance designated as noncompetitive or volatile shall provide to the commissioner information concerning at least 5 years of experience, with information evaluated as of the end of each calendar year. In addition to the latest reported information for each year, the insurer shall document any adjustments, including but not limited to development factors and trend adjustments, made to the reported data in projecting losses.

(3) The commissioner shall adopt by rule reasonable development factors and trend adjustments to be applied to the reported data.

History: En. Sec. 6, Ch. 400, L. 1989.

33-16-236. Actuarial review — fees paid by insurer. (1) For the purpose of determining pricing, the commissioner may employ or contract with actuarial consultants as necessary for any rate review authorized under the provisions of 33-16-234. The person conducting the review shall report to the commissioner the results of his review.

(2) The reasonable fees and expenses of an actuarial consultant employed by or contracting with the commissioner for purposes of a rate filing review must be assessed against and paid by the insurer whose rates are under review.

History: En. Sec. 7, Ch. 400, L. 1989.

Part 3

Insurers Acting in Concert

Part Cross-References

Price fixing, 30-14-205.

33-16-301. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969; R.C.M. 1947, 40-3641.

33-16-302. Insurers with common ownership or cosureties on bond — acting in concert. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969; R.C.M. 1947, 40-3642.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Workers' compensation rates and rating organizations, Title 33, ch. 16, part 10.

Workers' compensation, Title 39, ch. 71.

33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and 33-16-1005 shall not agree with each other or rating organizations or others to adhere thereto.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization shall not be sufficient in itself to support a finding that an agreement to so adhere exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969; amd. Sec. 2, Ch. 558, L. 1977; R.C.M. 1947, 40-3643.

33-16-304. Exchange of information or experience data — consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to ratemaking and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969; R.C.M. 1947, 40-3644.

33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(2) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate:

(a) the use of rates which meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than 10 days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice. For good cause and after hearing upon not less than 10 days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969; R.C.M. 1947, 40-3645.

Cross-References

Hearings by Commissioner, 33-1-701.

Casualty insurance — general provisions, Title 33, ch. 23.

33-16-306. Joint underwriters and reinsurers — compliance. Upon compliance with the provisions of this chapter applicable thereto, any rating organization, advisory organization, and any group, association, or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group, or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969; R.C.M. 1947, 40-3646.

33-16-307. Joint underwriting and joint reinsurance — application — restrictions on operations. (1) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization or by standing agreement among the members thereof, shall file with the commissioner:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such group, association, or other organization shall notify the commissioner promptly of every change in its constitution, its articles of

incorporation, agreement, or association, and its bylaws and rules governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association, or organization may be served.

(3) No such group, association, or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969; R.C.M. 1947, 40-3653.

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-16-308. Advisory organizations — application — requisites — restrictions on operations. (1) No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner:

(a) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws or rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members and subscribers; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969; R.C.M. 1947, 40-3652.

Cross-References

Unfair trade practices, Title 33, ch. 18.

Part 4

Rating Organizations

33-16-401. Rating organizations — compliance — application. (1) No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter.

(2) Every such rating organization shall file with its application:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business, all duly certified by the custodian or the originals thereof;

(b) a list of its members and subscribers;

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969; R.C.M. 1947, 40-3647.

33-16-402. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(1) permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination or withdraw therefrom;

(2) neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms;

(3) neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(4) neither practice nor sanction any plan or act of boycott, coercion, or intimidation;

(5) neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business;

(6) notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served;

(7) comply with the provisions of 33-16-105 and 33-16-203.

History: En. Sec. 15, Ch. 362, L. 1969; R.C.M. 1947, 40-3648.

33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs, and its proposed plan of business as he deems desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be $100 annually which shall be deposited in the general fund.

History: En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973; R.C.M. 1947, 40-3649.

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-404. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969; R.C.M. 1947, 40-3650.

33-16-405. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969; R.C.M. 1947, 40-3651.

Parts 5 through 9 reserved

Part 10

Workers' Compensation Rates and Rating Organizations

33-16-1001. Declaration of policy and purpose. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert.

(2) It is the purpose of this part to:

(a) authorize such ratemaking in concert and the operating of rating organizations thereto; and

(b) establish the general bases and standards for the making of such rates.

History: En. Sec. 1, Ch. 329, L. 1969; amd. Sec. 3, Ch. 558, L. 1977; R.C.M. 1947, 40-5601.

33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22.

History: En. Sec. 2, Ch. 329, L. 1969; amd. Sec. 4, Ch. 558, L. 1977; R.C.M. 1947, 40-5602.

33-16-1003. Certain reciprocal insurers excluded. This part shall not apply as to any reciprocal insurer transacting workers' compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969; R.C.M. 1947, 40-5603.

Cross-References

Reciprocal insurers — general provisions, Title 33, ch. 5, part 1.

33-16-1004. Rates — considerations — methods — standards. All rates must be made in accordance with the following provisions:

(1) Due consideration must be given to:

(a) past and prospective loss experience within and outside this state;

(b) catastrophe hazards, if any;

(c) a reasonable margin for underwriting profit and contingencies;

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) past and prospective expenses, both countrywide and those specially applicable to this state;

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination of insurance for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates may not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited.

History: En. Secs. 4, 5, 6, Ch. 329, L. 1969; R.C.M. 1947, 40-5604, 40-5605, 40-5606; amd. Sec. 1, Ch. 480, L. 1991.

33-16-1005. Membership in rating organization required — exception — filings with commissioner. (1) Every insurer, including the state compensation insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization.

History: En. Sec. 16, Ch. 329, L. 1969; amd. Sec. 5, Ch. 558, L. 1977; R.C.M. 1947, 40-5616; amd. Sec. 3, Ch. 232, L. 1987; amd. Sec. 53, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Cross-References

Workers' Compensation Plan No. 2 — insurance coverage, Title 39, ch. 71, part 22.

33-16-1006. Repealed. Sec. 5, Ch. 114, L. 1981.

History: En. Sec. 17, Ch. 329, L. 1969; R.C.M. 1947, 40-5617.

33-16-1007. Renumbered 33-16-1011 by Code Commissioner, 1981.

33-16-1008 through 33-16-1010 reserved.

33-16-1011. Classification and rating committee — membership — term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the rating organization and be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance.

History: En. Sec. 18, Ch. 329, L. 1969; amd. Sec. 6, Ch. 558, L. 1977; R.C.M. 1947, 40-5618; amd. Sec. 1, Ch. 114, L. 1981; MCA 1979, 33-16-1007; redes. 33-16-1011 by Code

Commissioner, 1981; amd. Sec. 54, Ch. 613, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 528, L. 1993; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 528 in (2)(a), at beginning, substituted "two" for "three" and in second sentence, after "The members must", deleted "reside in Montana and shall"; inserted (2)(d) adding one representative of insured employer; in (4), near beginning, inserted reference to subsection (2)(d) and near middle, after "producers", inserted "and employers"; in (5), near beginning, inserted "must be staffed by the rating organization and"; inserted (6) regarding public review of documents; and made minor changes in style. Amendment effective April 24, 1993.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

33-16-1012. Functions and powers of classification and rating committee — hearings — rulemaking. (1) The classification and rating committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment of all classifications;

(c) establish the advisory premium rates as provided for in 33-16-1005;

(d) publish material and pamphlets as it considers appropriate;

(e) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; and

(f) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committee pursuant to subsection (1)(e) must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2.

History: En. Sec. 2, Ch. 114, L. 1981; amd. Sec. 2, Ch. 528, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 528 in (1)(b), at end, substituted "classifications" for "manual rules and classification"; in (1)(e) deleted last two sentences that read: "The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections"; inserted (1)(f) authorizing Committee to make rules; inserted (2) concerning conduct of hearings and petitions for judicial review; inserted (3) making Committee subject to Title 2, chapter 3, parts 1 and 2; and made minor changes in style. Amendment effective April 24, 1993.

CHAPTER 17

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS

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33-17-203. Repealed.
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33-17-208. Prelicensing education — basic requirement.
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33-17-1201. Short title.
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33-17-1204. Review and approval of continuing education courses by commissioner — advisory council.
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33-17-1206. Rulemaking authority.
33-17-1207. Funding for continuing education program.

Chapter Cross-References

Agency generally, Title 28, ch. 10.

Part 1

General Provisions

33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) This chapter applies to all stock, mutual, and reciprocal insurers and to all kinds of insurance and annuities.

History: En. Sec. 145, Ch. 286, L. 1959; R.C.M. 1947, 40-3301; amd. Sec. 17, Ch. 713, L. 1989.

33-17-102. Definitions. As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent; or

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or

(xi) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of himself, his spouse, his employer, or his business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this definition, a "managing general agent" is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state or in any other state, including the authority to contract with an insurance producer for the insurer and terminate those contracts.

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

History: En. Secs. 146, 147, 148, 150, Ch. 286, L. 1959; R.C.M. 1947, 40-3302, 40-3303(part), 40-3304, 40-3306; amd. Sec. 5, Ch. 518, L. 1983; amd. Sec. 1, Ch. 409, L. 1987; amd. Sec. 18, Ch. 713, L. 1989; amd. Sec. 25, Ch. 798, L. 1991.

33-17-103. Exemptions from definition of insurance producer. The definition of insurance producer contained in 33-17-102 does not include:

(1) a person who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does not receive any commissions on the applications and his compensation is not varied by the volume of applications or premiums he takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, annuities, group or blanket accident and disability insurance or for the purpose of enrolling individuals under such plans, issuing certificates under such plans, or otherwise assisting in administering such plans, if no commission is paid for the service;

(4) an employer, his officers, or employees or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration of operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; or

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the solicitation or negotiation of insurance policies and contracts.

History: En. Sec. 149, Ch. 286, L. 1959; R.C.M. 1947, 40-3305; amd. Sec. 6, Ch. 518, L. 1983; amd. Sec. 19, Ch. 713, L. 1989.

Cross-References

Farm mutual insurers — license not required, 33-4-312.

Officers of fraternal benefit societies — license not required, 33-6-403.

Fraternal benefit societies — special license provisions, 33-7-525, 33-7-526.

Reciprocal insurer — attorney-in-fact, 33-17-103.

Part 2

Licensing and Appointment of Insurance Producers and Solicitors

Part Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-201. License required of insurance producer — forms. (1) A person may not in this state act as or hold himself out to be an insurance producer for subjects of insurance located, residing, or to be performed in this state unless licensed as an insurance producer under this chapter.

(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of a license.

(3) Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees.

(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.

(6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

History: En. Secs. 147, 151, Ch. 286, L. 1959; R.C.M. 1947, 40-3303(part), 40-3307; amd. Sec. 7, Ch. 518, L. 1983; amd. Sec. 17, Ch. 11, Sp. L. March 1986; amd. Sec. 2, Ch. 409, L. 1987; amd. Sec. 2, Ch. 480, L. 1987; amd. Sec. 12, Ch. 285, L. 1989; amd. Sec. 20, Ch. 713, L. 1989; (6)En. Sec. 4, Ch. 713, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Penalty provision — Montana Insurance Code, 33-1-104.

33-17-202. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971; R.C.M. 1947, 40-3308; amd. Sec. 3, Ch. 409, L. 1987; amd. Sec. 13, Ch. 285, L. 1989; amd. Sec. 6, Ch. 509, L. 1989.

33-17-203. Repealed. Sec. 19, Ch. 409, L. 1987.

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969; R.C.M. 1947, 40-3309; amd. Sec. 19, Ch. 198, L. 1979; amd. Sec. 1, Ch. 400, L. 1983.

33-17-204. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969; R.C.M. 1947, 40-3310; amd. Sec. 1, Ch. 345, L. 1979; amd. Sec. 4, Ch. 409, L. 1987.

33-17-205. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969; R.C.M. 1947, 40-3311.

33-17-206. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969; R.C.M. 1947, 40-3321; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

33-17-207. Purpose. The purposes of 33-17-208 and 33-17-209 are to further protect insurance consumers by producing better trained and more dedicated insurance producers; to educate and qualify prospective insurance producers to pass the state insurance producer's license examination; and to provide standards for the qualification of instructors, courses, and materials used to train prospective insurance producers.

History: En. Sec. 1, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

33-17-208. Prelicensing education — basic requirement. (1) (a) A person applying for a license to act as an insurance producer for property, casualty, and surety insurance shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(b) A person applying for a license to act as an insurance producer for life and disability insurance or as an insurance producer for a health service corporation shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(2) A person applying for licenses to act as an insurance producer for both the property, casualty, and surety areas and the life or disability areas shall meet the education requirements in all the areas of insurance.

(3) The minimum prelicensing education requirement does not apply to a person who:

(a) has been licensed within the 12 preceding months as an insurance producer in another state that requires prelicensing education and has completed the education in the other state;

(b) seeks a nonresident license, having been licensed as an insurance provider in his state of residence for at least 1 year;

(c) seeks a nonresident license and is from a state having a prelicensing education requirement;

(d) seeks to reinstate a license lapsed for less than 2 years;

(e) seeks a temporary license under 33-17-216; or

(f) is exempt from examination requirements under 33-17-212(7).

History: En. Sec. 2, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 36, Ch. 16, L. 1991; amd. Sec. 7, Ch. 798, L. 1991.

33-17-209. Review and approval of prelicensing education courses by commissioner — advisory council. (1) The commissioner shall approve prelicensing education instruction offered to persons intending to apply for a license under 33-17-211 or 33-30-312. Course content, instructors, and instructional format must be approved and reviewed periodically at the discretion of the insurance commissioner.

(2) In formulating rules and standards for the approval of prelicensing education courses, the commissioner shall consult with an advisory council consisting of two persons who are life and disability insurance producers or health service corporation insurance producers, two property and casualty insurance producers, one person employed by an insurer, and one health insurance producer. The commissioner shall appoint the members of this advisory council pursuant to 2-15-122 and shall consult with them prior to approving courses. The provisions of 2-15-122(5), (9), and (10) do not apply to this advisory council.

(3) In conducting periodic reviews of course content, instructors, or instructional format, the commissioner may exercise any investigative power of his office created under 33-1-311 or 33-1-315.

(4) If, pursuant to review or investigation, the commissioner determines that a prelicensing education program is not being operated in compliance with standards established under this section, he may revoke the program's approval, place the program under probationary approval, or issue a cease and desist order under 33-1-318.

History: En. Sec. 3, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

33-17-210 reserved.

33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence under 35-1-1312 or filed articles of incorporation under 35-2-214.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if he finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it.

History: En. Sec. 156, Ch. 286, L. 1959; amd. Sec. 19, Ch. 535, L. 1975; R.C.M. 1947, 40-3312; amd. Sec. 20, Ch. 198, L. 1979; amd. Sec. 2, Ch. 345, L. 1979; amd. Sec. 82, Ch. 370, L. 1987; amd. Sec. 5, Ch. 409, L. 1987; amd. Sec. 7, Ch. 509, L. 1989; amd. Sec. 21, Ch. 713, L. 1989; amd. Sec. 210, Ch. 368, L. 1991; amd. Sec. 170, Ch. 411, L. 1991.

33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (7), an individual applying for a license shall pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (6) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-2-708. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) Each individual applying for an examination shall remit the fees required by 33-2-708.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

(5) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall take the examination.

(6) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

(7) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be licensed;

(b) an applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection (b) does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for license as nonresident insurance producer;

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that he is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(f) an association applying for license under 33-17-211;

(g) a mechanical breakdown insurance producer.

(h) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state.

History: En. Sec. 157, Ch. 286, L. 1959; amd. Sec. 11, Ch. 44, L. 1969; R.C.M. 1947, 40-3313; amd. Sec. 3, Ch. 345, L. 1979; amd. Sec. 1, Ch. 211, L. 1981; amd. Sec. 18, Ch. 519, L. 1985; amd. Sec. 6, Ch. 409, L. 1987; amd. Sec. 1, Ch. 480, L. 1987; amd. Sec. 22, Ch. 713, L. 1989.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Licensing reciprocity, 33-17-401.

Montana Title Insurance Act, Title 33, ch. 25.

33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

(2) The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

(3) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(4) The examination of a title insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions.

History: En. Sec. 158, Ch. 286, L. 1959; amd. Sec. 1, Ch. 156, L. 1969; R.C.M. 1947, 40-3314; amd. Sec. 21, Ch. 198, L. 1979; amd. Sec. 19, Ch. 519, L. 1985; amd. Sec. 7, Ch. 409, L. 1987; amd. Sec. 23, Ch. 713, L. 1989.

33-17-214. Issuance of license — contents — lapse of license — change of address. (1) The commissioner shall promptly issue a license to a person pursuant to 33-17-211 and 33-17-212.

(2) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and such other information as the commissioner considers necessary.

(3) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(4) Each license remains in effect, unless suspended or revoked, as long as the fees required by 33-2-708 are paid.

(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without

having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change.

History: En. Sec. 159, Ch. 286, L. 1959; R.C.M. 1947, 40-3315; amd. Sec. 4, Ch. 345, L. 1979; amd. Sec. 24, Ch. 713, L. 1989.

33-17-215. Repealed. Sec. 14, Ch. 345, L. 1979.

History: En. Sec. 160, Ch. 286, L. 1959; R.C.M. 1947, 40-3316.

33-17-216. Temporary insurance producer license — fee. (1) The commissioner may issue a temporary license to or with respect to an individual qualified for the temporary license only as to age, residence, and trustworthiness and without requiring the individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed insurance producer upon the insurance producer's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed insurance producer disabled by injury or physical or mental illness;

(c) to an employee of a partnership, or officer or employee of a corporation, licensed as an insurance producer, upon the death or disability of an individual designated in the license to exercise the powers of an insurance producer;

(d) to the designee of a licensed insurance producer entering upon active service in the armed forces of the United States of America;

(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing such a license.

(2) The temporary license must be issued upon application filed with the commissioner in the form and containing the information as the commissioner may reasonably require and upon payment of the applicable fee as provided in 33-2-708.

(3) The temporary license must be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that a temporary license issued pursuant to subsection (1)(a) may be continued without payment of an additional fee until the executor or administrator disposes of the insurance business, but not to exceed a period of 15 months. A temporary license issued to the next of kin under subsection (1)(a) may not be extended for an additional term after the appointment and qualification of the administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.

History: En. Sec. 163, Ch. 286, L. 1959; R.C.M. 1947, 40-3319; amd. Sec. 27, Ch. 198, L. 1979; amd. Sec. 5, Ch. 345, L. 1979; amd. Sec. 25, Ch. 713, L. 1989.

33-17-217. Limitations and rights under temporary license. (1) The commissioner may not issue more than one temporary license, to or with respect to the same individual to be licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the insurance producer being replaced was licensed.

(3) As to a temporary insurance producer's license issued on account of the death or disability of an insurance producer, the licensee may represent all of the insurers last represented by the deceased or disabled insurance producer, but the licensee may not be licensed for an additional kind of insurance under the temporary license.

(4) A temporary licensee has the same license powers and duties as under a permanent license.

History: En. Sec. 164, Ch. 286, L. 1959; R.C.M. 1947, 40-3320; amd. Sec. 26, Ch. 713, L. 1989.

33-17-218. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 172, Ch. 286, L. 1959; amd. Sec. 13, Ch. 44, L. 1969; R.C.M. 1947, 40-3328; amd. Sec. 2, Ch. 344, L. 1979; amd. Sec. 6, Ch. 345, L. 1979.

33-17-219 and 33-17-220 reserved.

33-17-221. Licensing insurance vending machines. (1) A licensed resident insurance producer may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines supervised by him and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machine, and use of a mechanical vending machine to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each mechanical vending machine to be used to sell or issue a policy, the commissioner shall issue to the insurance producer a special mechanical vending machine license. The license must specify the name and address of the insurer and insurance producer, the name of the policy to be sold or issued through the mechanical vending machine, the serial number of the mechanical vending machine, and the place where the machine will operate. The license is subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the insurance producer. The commissioner shall also revoke the license of a mechanical vending machine if he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee is as provided in 33-2-708 for each license year or part of the year for each respective mechanical vending machine. Proof of the existence of a subsisting license must be displayed on or about each mechanical vending machine in use in the manner that the commissioner may reasonably require.

History: En. Sec. 166, Ch. 286, L. 1959; R.C.M. 1947, 40-3322; amd. Sec. 27, Ch. 713, L. 1989.

Cross-References

Suspension and revocation of licenses, 33-17-1001.

33-17-222 through 33-17-230 reserved.

33-17-231. Appointment of insurance producers — continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee as stated in 33-2-708.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

History: En. Sec. 161, Ch. 286, L. 1959; R.C.M. 1947, 40-3317; amd. Sec. 3, Ch. 344, L. 1979; amd. Sec. 7, Ch. 345, L. 1979; amd. Sec. 8, Ch. 409, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 20, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 deleted former last sentence of (1) that read: "The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year"; at beginning of first sentence of (2) deleted "Subject to annual renewal by the insurer" and at end inserted "or the insurance producer" and inserted second sentence that read: "Termination of the insurer's authority in Montana also terminates the appointment"; deleted former (3) that read: "Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its insurance producers whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all insurance producers whose appointments in this state are not to remain in effect"; and made minor changes in style.

33-17-232. Rights of insurance producer following termination of appointment. (1) Following termination of any such agency appointment as to property, casualty, or surety insurance and subject to the terms of any agreement between the insurance producer and the insurer, the insurance producer may continue to service and receive from the insurer commissions or other compensation relative to business written by him for the insurer during the existence of the appointment.

(2) This section does not apply as to insurance producers of direct writing insurers or insurance producers or insurers between whom the relationship of employer and employee exists.

History: **En. Sec. 162, Ch. 286, L. 1959; R.C.M. 1947, 40-3318; amd. Sec. 1, Ch. 713, L. 1989.**

33-17-233 through 33-17-235 reserved.

33-17-236. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

History: **En. Sec. 5, Ch. 713, L. 1989.**

33-17-237. Notification of violation or appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department.

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other

data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

(5) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith.

History: En. Sec. 6, Ch. 713, L. 1989; amd. Sec. 21, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 deleted second sentence of (1) that read: "If the reason of the termination is for any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7"; inserted (2) requiring notification of the Department upon termination; inserted (3) establishing a duty to notify the Department if a violation has occurred; and inserted (4) requiring that certain information regarding the alleged termination of violation be provided upon request.

Part 3
Adjusters

Part Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

Private investigators — nonapplicability of provisions, 37-60-105.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) A person may not in this state act as or hold himself out to be an adjuster unless licensed as an adjuster under this chapter. A person shall apply for an adjuster license to the commissioner according to forms the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster upon payment of the license fee provided in 33-2-708.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;

(d) must be trustworthy and of good character and reputation;

(e) shall have and maintain in this state an office accessible to the public and keep in the office the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to

exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license. An additional full license fee must be paid for each individual in excess of one named in the partnership or corporation adjuster license to exercise its powers.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971; R.C.M. 1947, 40-3327; amd. Sec. 28, Ch. 713, L. 1989.

Part 4

Nonresident Licensees

Part Cross-References

Residence — rules for determining, 1-1-215.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-401. Nonresident insurance producer — reciprocity. (1) A nonresident person may apply for a license if:

(a) the person meets the requirements of 33-17-211(2);

(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this state; and

(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.

(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:

(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and

(b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limita-

tion, conditions, or requirements must be imposed upon the residents of the other state.

(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state.

History: En. Sec. 1, Ch. 44, L. 1969; R.C.M. 1947, 40-3333; amd. Sec. 8, Ch. 345, L. 1979; amd. Sec. 9, Ch. 409, L. 1987; amd. Sec. 29, Ch. 713, L. 1989.

33-17-402. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 2, Ch. 44, L. 1969; R.C.M. 1947, 40-3334.

33-17-403. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 3, Ch. 44, L. 1969; R.C.M. 1947, 40-3335.

33-17-404. Countersigning coverage of residents. Except as provided in 33-17-1111, a nonresident insurance producer may not sign or countersign policies covering subjects of insurance residing, located, or to be performed in Montana.

History: En. Sec. 4, Ch. 44, L. 1969; R.C.M. 1947, 40-3336; amd. Sec. 9, Ch. 345, L. 1979; amd. Sec. 1, Ch. 395, L. 1983; amd. Sec. 30, Ch. 713, L. 1989.

33-17-405. Service of process — commissioner as agent. A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward, at the nonresident person's address of record, a copy of the process by certified mail to the person for whom he has received the process.

History: En. Sec. 5, Ch. 44, L. 1969; R.C.M. 1947, 40-3337; amd. Sec. 31, Ch. 713, L. 1989.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-17-406. Nonresident insurance producer subject to insurance code. A nonresident insurance producer is subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969; R.C.M. 1947, 40-3338; amd. Sec. 32, Ch. 713, L. 1989.

33-17-407. Nonresident insurance producer to pay taxes — annual report required. (1) A nonresident insurance producer is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident insurance producer shall file annually a Montana income tax return as required in Title 15.

History: En. Sec. 3, Ch. 395, L. 1983; amd. Sec. 33, Ch. 713, L. 1989.

Cross-References

Premium tax imposed on policy issued through nonresident licensee, 33-2-710.

33-17-408 through 33-17-410 reserved.

33-17-411. Penalty. A nonresident insurance producer who violates a condition of his Montana license or a provision of this part is subject to a fine by the commissioner of up to $50,000 for each violation and may, at the discretion of the commissioner, have his Montana nonresident license revoked or suspended for a period of up to 5 years.

History: En. Sec. 5, Ch. 395, L. 1983; amd. Sec. 34, Ch. 713, L. 1989.

Part 5

Consultants

Part Cross-References

Hearings on decisions of Commissioner, 33-1-313.

Former criminal offenders — considerations in licensing, 37-1-203.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-501. Short title. This part may be cited as "The Montana Insurance Consultant Licensure Act".

History: En. 40-3339 by Sec. 1, Ch. 144, L. 1975; R.C.M. 1947, 40-3339.

33-17-502. Prohibition on holding out as consultant — receiving fee. (1) A person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services.

History: En. 40-3340, 40-3348 by Secs. 2, 10, Ch. 144, L. 1975; R.C.M. 1947, 40-3340, 40-3348; amd. Sec. 2, Ch. 86, L. 1979; amd. Sec. 40, Ch. 613, L. 1989; amd. Sec. 35, Ch. 713, L. 1989.

33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50.

(2) Each consultant license expires on May 31 next following the date of issue.

History: En. 40-3341 by Sec. 3, Ch. 144, L. 1975; R.C.M. 1947, 40-3341; amd. Sec. 36, Ch. 713, L. 1989.

33-17-504. Issuing license — limitations. The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221 through 33-1-229, as specified in the license.

History: En. 40-3342 by Sec. 4, Ch. 144, L. 1975; R.C.M. 1947, 40-3342; amd. Sec. 13, Ch. 467, L. 1981; amd. Sec. 37, Ch. 713, L. 1989.

33-17-505. Qualification — fee. (1) In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

(2) The fee for taking the consultant license examination is $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination may be no more than the cost of administering the examination, not to exceed $50.

History: En. 40-3343 by Sec. 5, Ch. 144, L. 1975; amd. Sec. 1, Ch. 146, L. 1977; R.C.M. 1947, 40-3343; amd. Sec. 1, Ch. 324, L. 1987; amd. Sec. 38, Ch. 713, L. 1989.

33-17-506. Grounds for refusal to issue license. The commissioner may refuse to issue a consultant license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant, has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part); amd. Sec. 39, Ch. 713, L. 1989.

33-17-507. Revocation. The commissioner may revoke or suspend a consultant license for a period he determines if, after notice and hearing as specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of his dealings as an insurance consultant;

(2) has made a material misstatement in application for a consultant license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part); amd. Sec. 40, Ch. 713, L. 1989.

Cross-References

Hearings by Commissioner, 33-1-313.

33-17-508 through 33-17-510 reserved.

33-17-511. Consideration for services only on written memorandum. A person licensed as an insurance consultant under this part may not receive a fee for examining, appraising, reviewing, or evaluating an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. An insurance consultant shall retain a copy of every memorandum or contract for not less than 3 years after those services have been fully performed.

History: En. 40-3345 by Sec. 7, Ch. 144, L. 1975; R.C.M. 1947, 40-3345; amd. Sec. 41, Ch. 713, L. 1989.

33-17-512. Limitation on type of consideration. A licensed insurance consultant may not receive a commission, service fee, brokerage fee, or other valuable consideration for the sale or service of a line of insurance, annuity, security, or pension trust if the consultant has received compensation from the client for consulting services on the same line of insurance, annuity, security, or pension trust sold or serviced within the preceding 12 months.

History: En. 40-3346 by Sec. 8, Ch. 144, L. 1975; R.C.M. 1947, 40-3346; amd. Sec. 42, Ch. 713, L. 1989; amd. Sec. 1, Ch. 215, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 215 substituted language concerning limitation on receipt of fees or consideration for former text that read: "A person licensed as an insurance consultant may not receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for a person to whom the licensee has performed a related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

33-17-513. Restrictions on insurers recommended by licensee. A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from an authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

History: En. 40-3347 by Sec. 9, Ch. 144, L. 1975; R.C.M. 1947, 40-3347; amd. Sec. 43, Ch. 713, L. 1989.

Part 6
Administrators

Part Cross-References

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-601. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 1, Ch. 343, L. 1979; amd. Sec. 10, Ch. 409, L. 1987.

33-17-602. Written agreement required. (1) A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement must contain provisions that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement must contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments to it must be furnished to the insurer by the administrator and be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

History: En. Sec. 2, Ch. 343, L. 1979; amd. Sec. 11, Ch. 409, L. 1987; amd. Sec. 44, Ch. 713, L. 1989.

33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on July 1. A request for renewal must be accompanied by a renewal fee of $100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than $500 or more than $1,500.

History: En. Sec. 12, Ch. 343, L. 1979; amd. Sec. 45, Ch. 713, L. 1989; amd. Sec. 8, Ch. 798, L. 1991.

Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

33-17-604. Waiver of certification requirements. The commissioner may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting a waiver include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of the requirements.

History: En. Sec. 13, Ch. 343, L. 1979; amd. Sec. 46, Ch. 713, L. 1989.

33-17-605. Repealed. Sec. 19, Ch. 409, L. 1987.

History: En. Sec. 10, Ch. 343, L. 1979.

33-17-606 through 33-17-610 reserved.

33-17-611. Maintenance of information. For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use the information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator.

History: En. Sec. 3, Ch. 343, L. 1979; amd. Sec. 47, Ch. 713, L. 1989.

33-17-612. Approval of advertising. An administrator may use only such advertising pertaining to the business underwritten by an insurer as is approved by the insurer in advance of its use.

History: En. Sec. 4, Ch. 343, L. 1979.

33-17-613. Collection of charges and premiums. (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from the insurer are held by the administrator in a fiduciary capacity. These funds must be immediately remitted to the person entitled to them or must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator may not pay a claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account must be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled to the remittance;

(b) deposit in an account maintained in the name of the insurer;

(c) transfer to and deposit in a claims paying account, with claims to be paid as provided in 33-17-615;

(d) payment to a group policyholder for remittance to the insurer entitled to the payment;

(e) payment to the administrator of its commission, fees, or charges; or

(f) remittance of return premiums to the person entitled to the premium.

History: En. Sec. 5, Ch. 343, L. 1979; amd. Sec. 48, Ch. 713, L. 1989.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

33-17-614. Treatment of payments. Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in 33-17-602, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to be received by the insurer and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

History: **En. Sec. 6, Ch. 343, L. 1979.**

33-17-615. Payment of claims. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

History: **En. Sec. 7, Ch. 343, L. 1979.**

33-17-616. Delivery of documents. Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so.

History: **En. Sec. 8, Ch. 343, L. 1979.**

33-17-617. Claim adjustment and settlement. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

History: **En. Sec. 9, Ch. 343, L. 1979.**

33-17-618. Insured persons to be notified of availability of administrator. Whenever the services of an administrator are utilized, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship between the administrator, the policyholder, and the insurer. Whenever an administrator collects funds, the administrator shall identify and state, separately in writing, to the person paying to the administrator any charge or premium for insurance coverage the amount of such charge or premium specified by the insurer for the insurance coverage.

History: **En. Sec. 11, Ch. 343, L. 1979.**

Parts 7 through 9 reserved

Part 10

Revocation, Suspension, and Penalties

33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) made a materially untrue statement in the license application or in the continuing education affidavit;

(h) misrepresented the terms of an actual or proposed insurance contract;

(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(j) had a similar license suspended or revoked in any other state;

(k) forged another's name to an application for insurance;

(l) cheated on an examination for a license; or

(m) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204.

History: En. Sec. 173, Ch. 286, L. 1959; R.C.M. 1947, 40-3329; amd. Sec. 6, Ch. 395, L. 1983; amd. Sec. 12, Ch. 409, L. 1987; amd. Sec. 28, Ch. 537, L. 1987; amd. Sec. 49, Ch. 713, L. 1989; amd. Sec. 2, Ch. 164, L. 1993; amd. Sec. 8, Ch. 622, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 164 near middle of (1) increased length of allowable license suspension from not more than 12 months to up to 5 years and after "chapter" deleted "or any surplus lines insurance producer license"; and made minor changes in style.

Chapter 622 in (1)(g), at end, inserted "or in the continuing education affidavit"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Termination of criminal's supervision — restoration of rights, Art. II, sec. 28, Mont. Const.

Revocation of surplus lines insurance producer license, 33-2-313.

Former criminal offenders — considerations in licensing, 37-1-203.

Felony — definition, 45-2-101.

33-17-1002. Procedure following suspension or revocation. (1) Upon suspension or revocation of a license, the commissioner shall immediately notify the licensee of the suspension or revocation either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail is effectuated when the notice is mailed.

(2) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and thereafter not until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

(3) If the license of a partnership or corporation is suspended or revoked, no member of the partnership or officer or director of the corporation may be licensed or be designated in a license to exercise its powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

History: **En. Sec. 174, Ch. 286, L. 1959; R.C.M. 1947, 40-3330; amd. Sec. 13, Ch. 409, L. 1987; amd. Sec. 50, Ch. 713, L. 1989.**

33-17-1003. Return of license. (1) All licenses issued under this chapter, although issued and delivered to the licensee insurance producer or adjuster are at all times the property of the state of Montana. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall immediately deliver it to the commissioner either by personal delivery or by mail.

(2) As to any license lost, stolen, or destroyed while in the possession of a licensee or person, the commissioner may accept in lieu of return of the license the affidavit of the licensee or person responsible for or involved in the safekeeping of the license, concerning the facts of the loss, theft, or destruction.

History: **En. Sec. 175, Ch. 286, L. 1959; R.C.M. 1947, 40-3331; amd. Sec. 51, Ch. 713, L. 1989.**

33-17-1004. Acting as insurance producer or adjuster without license — penalty. Except as provided in 33-17-411, a person who, in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is guilty of a misdemeanor and upon conviction shall be fined $500 or imprisoned in the county jail for 90 days, or both.

History: **En. 40-3332 by Sec. 1, Ch. 256, L. 1967; R.C.M. 1947, 40-3332; amd. Sec. 22, Ch. 198, L. 1979; amd. Sec. 7, Ch. 395, L. 1983; amd. Sec. 14, Ch. 409, L. 1987; amd. Sec. 52, Ch. 713, L. 1989.**

Part 11

Conduct of Business by Insurance Producers

33-17-1101. Place of business — display of license — records. (1) Every resident insurance producer shall have and maintain a place of business in this state accessible to the public. A nonresident insurance producer may maintain a place of business in this state. An insurance producer's place of business must be a place in which he principally conducts transactions under his license. The street address of the place must appear upon the license. Nothing in this section prohibits maintenance of the place of business in the licensee's place of residence.

(2) The license must be conspicuously displayed in the place of business at the street address shown on the license in a part of the place of business customarily open to the public.

(3) The insurance producer shall keep at his place of business complete records pertaining to transactions under his license for a period of at least 3 years after completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216.

History: En. Sec. 167, Ch. 286, L. 1959; R.C.M. 1947, 40-3323; amd. Sec. 10, Ch. 345, L. 1979; amd. Sec. 20, Ch. 519, L. 1985; amd. Sec. 15, Ch. 409, L. 1987; amd. Sec. 53, Ch. 713, L. 1989.

33-17-1102. Reporting and accounting for premiums — misappropriation. (1) All insurance premiums or return premiums received by an insurance producer must be held in a separate trust account. The insurance producer shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the insurance premiums or return premiums he receives to the insured, insurer, or insurance producer entitled to them. Except for a title insurance producer as defined in 33-25-105, an insurance producer may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of the deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any insurance producer not lawfully entitled to the funds may not divert or appropriate the funds or any portion of the funds to his own use.

(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law.

History: En. Sec. 168, Ch. 286, L. 1959; amd. Sec. 51, Ch. 359, L. 1977; R.C.M. 1947, 40-3324; amd. Sec. 21, Ch. 519, L. 1985; amd. Sec. 16, Ch. 409, L. 1987; amd. Sec. 54, Ch. 713, L. 1989.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

33-17-1103. Accepting and paying commissions, fees, or consideration — restriction. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time he performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share his commissions or other compensation received or to be received by him on account

of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions, except as provided in 33-17-1113. This provision does not affect payment of the regular salaries due employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation, or use of funds for family or personal purposes.

(3) This section does not apply to those transactions with surplus lines insurance producers that are lawful under 33-2-306.

History: En. Sec. 169, Ch. 286, L. 1959; R.C.M. 1947, 40-3325; amd. Sec. 11, Ch. 345, L. 1979; amd. Sec. 17, Ch. 409, L. 1987; amd. Sec. 55, Ch. 713, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-17-1104. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 170, Ch. 286, L. 1959; R.C.M. 1947, 40-3326; amd. Sec. 18, Ch. 409, L. 1987.

33-17-1105 and 33-17-1106 reserved.

33-17-1107. Prohibited relations with long-term care facility. An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility as defined in 37-9-101 may not solicit, negotiate, transact, or effectuate a life or disability policy or certificate of insurance for a resident of a long-term care facility.

History: En. Sec. 1, Ch. 699, L. 1991.

33-17-1108 through 33-17-1110 reserved.

33-17-1111. Resident insurance producer required — reciprocity — countersignature — records. (1) An authorized insurer may not issue a policy covering a subject of insurance residing, located, or to be performed in Montana unless:

(a) the policy is written through a licensed insurance producer residing in Montana;

(b) the policy is written through a licensed nonresident insurance producer and, if a countersignature would be required by the resident state of the nonresident insurance producer upon a Montana resident insurance producer writing business in the resident state of the nonresident insurance producer, the policy or countersignature endorsement attached to the policy is countersigned by a Montana resident licensed insurance producer; or

(c) the policy is written through a licensed nonresident insurance producer who is a resident of a state that does not require countersignatures.

(2) A countersignature may not be made in blank. The insurance producer may by express written authorization given in advance delegate to his salaried clerical employee the power to countersign in the name of the insurance producer those policies or classes of policies designated in the authorization if the initials of the employee are written below the insurance producer's name on the countersignature, but the insurance producer may not thereby delegate or have power to delegate to a person the power or authority to bind an insurer with respect to a risk not already bound by the insurance producer or other person having clear authority from the insurer to bind. The insurance

producer is responsible for all of the acts of the employee within the scope of the authority delegated. The insurance producer shall keep a record of all coverages countersigned by him or by his authority.

(3) This section does not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation of any common carrier or vehicle;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident to the insurance;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through insurance producers compensated only by salary or issued by insurers not using insurance producers in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section does not invalidate a policy otherwise valid as between the insurer and the insured.

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963; R.C.M. 1947, 40-2822; amd. Sec. 12, Ch. 345, L. 1979; amd. Sec. 2, Ch. 395, L. 1983; amd. Sec. 56, Ch. 713, L. 1989.

33-17-1112. Salaried personnel not to countersign — exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed insurance producer residing in Montana, whose compensation as an insurance producer is by commission computed as a percentage of the premium received on each policy written, has power to countersign as required by 33-17-1111.

(2) A branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation from the insurer is in whole or in part by salary, does not have power to countersign policies or countersignature endorsements to policies; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident insurance producer having power to execute the policy is then reasonably available, then any other individual having authority from the insurer may execute the policy in the first instance in order to make a contract between the insurer and the obligee or the insured if the policy is subsequently countersigned in fact by a resident insurance producer.

History: En. Sec. 68, Ch. 286, L. 1959; R.C.M. 1947, 40-2823; amd. Sec. 57, Ch. 713, L. 1989.

33-17-1113. Policies originating outside state — commission of resident insurance producer. (1) As to a policy or an endorsement to a policy that is subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, a commission of not less than 5% of the premium charged and received but not more than 50% of the commission paid by the insurer is payable to the countersigning insurance producer, so that a record within Montana will be kept of the business and so that the state may better receive any tax required by law to be paid with respect to the insurance. If, however, the originating insurance producer or the insurer desires additional service to be rendered during the term of the policy, then the compensation for the countersigning resident insurance producer must be in an additional amount as is fixed by mutual agreement of the parties in interest.

(2) If pursuant to the laws of another state the countersigning insurance producers of that state retain as commission or compensation with respect to business originated by Montana insurance producers more than 5% of the premium, then the Montana insurance producers who countersign policies representing business originated by insurance producers of the other state shall charge and receive a commission in an amount not less than that received by countersigning insurance producers of the other state.

History: En. Sec. 69, Ch. 286, L. 1959; R.C.M. 1947, 40-2824; amd. Sec. 58, Ch. 713, L. 1989.

33-17-1114. Policies issued at home or branch offices. Nothing in 33-17-1111 through 33-17-1113 prevents an insurer from issuing a policy, as to which the countersignature requirement of 33-17-1111 applies, at its home or branch office, but the policy must be subsequently countersigned, where otherwise required, by an insurance producer residing in Montana. The insurance producer residing in Montana shall receive the commission on the policy when the insurance premium is paid. This section does not apply to life insurance.

History: En. Sec. 70, Ch. 286, L. 1959; R.C.M. 1947, 40-2825; amd. Sec. 59, Ch. 713, L. 1989.

Part 12

Insurance Producer and Consultant Continuing Education Act

33-17-1201. Short title. This part may be cited as the "Insurance Producer and Consultant Continuing Education Act".

History: En. Sec. 1, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1202. Purpose. The purposes of this part are to:

(1) protect insurance consumers and dedicated insurance producers and consultants by requiring continuing education for insurance producers and consultants;

(2) better educate insurance producers and consultants about changes in insurance law, products, ethical conduct as an insurance producer or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials.

History: En. Sec. 2, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life, disability, or credit life and disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through (7)(g);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state accords substantially similar privileges to and has similar requirements of residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) an insurance producer or consultant otherwise exempted by the commissioner; or

(f) a person selling only credit life and disability insurance incidental to other noninsurance activities.

History: En. Sec. 3, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The filing fee and process for approval of a course, lecture, seminar, or instructional program must be determined by the commissioner by rule. The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of one representative of the independent insurance agents of Montana, one representative of the Montana association of life underwriters, one representative of the professional insurance agents of Montana, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.

History: En. Sec. 4, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1205. *(Effective January 1, 1995)* **Compliance — failure to comply.** (1) Each person subject to the requirements of 33-17-1203 shall file annually on a form supplied by the commissioner written certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding calendar year. The form must be accompanied with a filing fee established by the commissioner.

(2) The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee in the amount of twice the annual filing fee. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant.

(3) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(4) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (3). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (3). The fine may not exceed the penalty permitted by 33-1-317.

History: En. Sec. 5, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(2), Ch. 622, L. 1993, provided that this section is effective January 1, 1995.

33-17-1206. Rulemaking authority. The commissioner may adopt rules to implement this part.

History: En. Sec. 6, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1207. Funding for continuing education program. All annual continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by this part, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law.

History: En. Sec. 9, Ch. 622, L. 1993.

Compiler's Comments

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 18

UNFAIR TRADE PRACTICES

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Part 10 — Enforcement

33-18-1001. Complaint handling — record.
33-18-1002. Power of commissioner to examine insurers.
33-18-1003. Undefined unfair practices — procedures for determining and restraining.
33-18-1004. Desist orders for prohibited practices.
33-18-1005. Penalty for violation of cease and desist orders.
33-18-1006. Desist orders for prohibited practices.

Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Personal solicitation sales — exemption for insurance sales, 30-14-502.

Insurance contracts — policy requirements — construction, Title 33, ch. 15.

Part 1
General Provisions

33-18-101. Purposes. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in P.L. 79-15, which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew. (1) No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization, including a mutual insurer formed to provide insurance to the members of an association or organization, from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance.

History: En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502; amd. Sec. 2, Ch. 319, L. 1981; amd. Sec. 1, Ch. 143, L. 1983.

Part 2
Insurer's Relations With Insured

33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

Cross-References

Insurance contracts — policy requirements — construction, Title 33, ch. 15.

Administrative penalty for failure to pay promptly — determination by Commissioner whether delay is general course of business practice, 33-18-232.

Crop hail insurance, Title 80, ch. 2, part 2.

33-18-202. Misrepresentation and false advertising of policies prohibited. No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which:

(1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

(4) is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(6) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7) misrepresents any insurance policy as being shares of stock.

History: En. Sec. 205, Ch. 286, L. 1959; R.C.M. 1947, 40-3503; amd. Sec. 1, Ch. 9, L. 1979.

33-18-203. False or deceptive advertising prohibited. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

History: En. Sec. 206, Ch. 286, L. 1959; R.C.M. 1947, 40-3504.

Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

33-18-204. Twisting prohibited. No person shall make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange, or convert any insurance policy.

History: En. Sec. 207, Ch. 286, L. 1959; R.C.M. 1947, 40-3505.

33-18-205. Filing or publishing false financial statements or making false entries prohibited. (1) No person shall file with any supervisory or other public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer. Any person who aids or abets in any such violation of this section shall be punishable upon conviction by a fine of $1,000 or by imprisonment in the county jail for 6 months or both such fine and imprisonment.

History: En. Sec. 208, Ch. 286, L. 1959; amd. Sec. 1, Ch. 29, L. 1967; R.C.M. 1947, 40-3506.

Cross-References

Unsworn falsification to authorities — misdemeanor, 45-7-203.

Misdemeanor — definition, 46-18-212.

33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay, or developmental disability.

(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay, or developmental disability.

(5) As used in this section, the following definitions apply:

(a) "Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.

(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.

(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition.

History: En. Sec. 211, Ch. 286, L. 1959; R.C.M. 1947, 40-3509; amd. Sec. 1, Ch. 318, L. 1991.

33-18-207. Preferred rates to fictitious groups prohibited — approval of preferred group rates and forms. (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory and as not otherwise being in conflict with subsection (1) above or with any provision of parts 1 through 4 of chapter 16 to the extent that parts 1 through 4 are, by their terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of chapter 16, part 10.

History: **En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977; R.C.M. 1947, 40-3520.**

33-18-208. Contract to contain agreements — rebates prohibited — life, disability, and annuity contracts. Except as otherwise expressly provided by law, no person shall knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value whatsoever not specified in the contract.

History: **En. Sec. 212, Ch. 286, L. 1959; R.C.M. 1947, 40-3510.**

33-18-209. Exceptions to discrimination and rebates provision. Nothing in 33-18-206 and 33-18-208 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer;

(2) in the case of life insurance policies issued on the industrial debit, preauthorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense;

(3) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) reduction of premium rate for policies of large amount but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

(5) issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

History: En. Sec. 213, Ch. 286, L. 1959; R.C.M. 1947, 40-3511.

Cross-References

Discrimination in insurance and retirement plans, 49-2-309.

33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual, but an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; however, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977; R.C.M. 1947, 40-3512; amd. Sec. 19, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 699, L. 1991; amd. Sec. 35, Ch. 798, L. 1991.

Cross-References

Discrimination in insurance and retirement plans, 49-2-309.

33-18-211. Stock operations and advisory board contracts. No person shall issue or deliver or permit its insurance producers, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

History: En. Sec. 215, Ch. 286, L. 1959; R.C.M. 1947, 40-3513; amd. Sec. 1, Ch. 713, L. 1989.

33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) A person may not willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such

insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not be deemed to prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It may not be considered to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section is punishable under 33-1-104.

History: En. Sec. 221, Ch. 286, L. 1959; R.C.M. 1947, 40-3519; amd. Sec. 1, Ch. 86, L. 1979; amd. Sec. 29, Ch. 537, L. 1987; amd. Sec. 41, Ch. 613, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.

33-18-213. Extension of credit to policyholder. Notwithstanding any other provision of law, an insurance producer, as defined in 33-17-102, may extend credit to a policyholder in connection with the issuance or servicing of any policy procured or negotiated by the insurance producer, but any credit so extended must satisfy one of the following requirements:

(1) if credit is extended to a policyholder for not more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, no interest may be charged; or

(2) if credit is extended to a policyholder for more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not more than 1 ½% a month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument signed by the policyholder, any interest charged for such credit shall be clearly stated in the instrument and may not exceed the legal rate of interest authorized in 31-1-107.

History: En. Sec. 1, Ch. 128, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-18-214 through 33-18-220 reserved.

33-18-221. Designation of specific repair shops prohibited — lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed

companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

History: En. Sec. 1, Ch. 554, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-222. Lowest prevailing market price. For purposes of 33-18-221 and 33-18-223, "lowest prevailing market price" means the lowest market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

History: En. Sec. 2, Ch. 554, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-223. Prohibited activities — glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with any person that requires a glass repair shop to bill through that person as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer for the purpose of entering into agreements with other automobile glass dealers to perform glass replacement or glass repair work.

History: En. Sec. 3, Ch. 554, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-224 through 33-18-230 reserved.

33-18-231. State administrative process to provide timely payment of medical benefits — definitions. In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

(2) "Proof of loss" means any document accepted by an insurer upon which payment of benefits is made.

History: En. Sec. 1, Ch. 300, L. 1983.

33-18-232. Time for payment of claims. (1) If within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer.

(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable.

History: En. Sec. 2, Ch. 300, L. 1983.

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) on an insurer if he finds that the insurer as a general course of business practice in this state fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; or

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether such claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to such third person, or in favor of any other person entitled to the benefits of a policy.

(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation.

(3) If an insurer can demonstrate that it has consistently paid 90% of the total amount outstanding in claims within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2).

History: En. Sec. 3, Ch. 300, L. 1983.

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-234. Right of privacy guaranteed. Nothing in 33-18-231 through 33-18-235 requires the commissioner to disclose information in violation of the Insurance Information and Privacy Protection Act.

History: En. Sec. 4, Ch. 300, L. 1983.

Cross-References

Insurance information and privacy protection, Title 33, ch. 19.

33-18-235. Rulemaking authority. The commissioner shall make rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234.

History: En. Sec. 5, Ch. 300, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-18-236 through 33-18-240 reserved.

33-18-241. Repealed. Sec. 2, Ch. 278, L. 1987.

History: En. Sec. 1, Ch. 504, L. 1985.

33-18-242. Independent cause of action — burden of proof. (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them.

History: En. Sec. 3, Ch. 278, L. 1987.

Part 3

Insurers — Noninsurance-Related Prohibitions

33-18-301. Prohibited relations with mortuaries. (1) No life insurer may own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business in Montana.

(2) No life insurer may contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral or be named beneficiary of any person insured by such insurer. This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.

(3) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 223, Ch. 286, L. 1959; R.C.M. 1947, 40-3521; amd. Sec. 23, Ch. 198, L. 1979; amd. Sec. 1, Ch. 229, L. 1981.

Cross-References

Morticians — general provisions, Title 37, ch. 19, part 1.

Misdemeanor — definition, 46-18-212.

33-18-302. Defaming insurer prohibited. No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

History: En. Sec. 209, Ch. 286, L. 1959; R.C.M. 1947, 40-3507.

Cross-References
Civil libel, 27-1-802.
Criminal defamation, 45-8-212.

33-18-303. Boycott, coercion, or intimidation prohibited. No person shall enter into any agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

History: En. Sec. 210, Ch. 286, L. 1959; R.C.M. 1947, 40-3508.

Cross-References
Restraint of trade, 30-14-205.
Intimidation — criminal offense, 45-5-203.

33-18-304. Interlocking ownership and management — restrictions. (1) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers or have a common management with any other insurer or insurers unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

History: En. Sec. 219, Ch. 286, L. 1959; R.C.M. 1947, 40-3517.

Cross-References
Affiliation and merger — holding company systems, Title 33, ch. 2, part 11.

33-18-305. Political contributions prohibited — penalty. (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization or for or in aid of any corporation or other body organized or maintained for political purposes or for or in aid of any candidate for political office or for nomination for such office or for any political purpose whatsoever or for the reimbursement or indemnification of any person for money or property so used.

(2) Any officer, director, stockholder, attorney, or insurance producer of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than $1,000; and any officer or director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

History: En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References
Prohibited contributions from corporations, 13-35-227.
Campaign finance, Title 13, ch. 37, part 2.
Misdemeanor, 46-18-212.

Part 4

Insured's Relations With Insurer

33-18-401. False application, claim, and proof of loss — criminal penalty. (1) An insurance producer, examining physician, applicant, or other person who knowingly or willfully makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522; amd. Sec. 60, Ch. 713, L. 1989.

Part 5

Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring insurance producer prohibited. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or insurance producer or group of insurance producers.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose information relative to a contract of insurance which is required by the credit transaction:

(i) for the purpose of replacing such insurance; and

(ii) without the prior written consent of the borrower;

(e) require any procedures or conditions of licensed insurance producers or insurers not customarily required of those insurance producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1; amd. Sec. 1, Ch. 281, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

Cross-References

Definition of regulated lender, 31-1-111.

Property insurance, Title 33, ch. 24.

Parts 6 through 9 reserved

Part 10

Enforcement

33-18-1001. Complaint handling — record. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

History: En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.2.

33-18-1002. Power of commissioner to examine insurers. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History: En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.3.

33-18-1003. Undefined unfair practices — procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

(2) If such report charges a violation of this chapter and if such method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just, but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof, including all evidence taken and the report and findings, shall be received in evidence in such action.

(3) If the commissioner's report made under subsection (1) above or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

History: En. Sec. 217, Ch. 286, L. 1959; R.C.M. 1947, 40-3515.

Cross-References

Attorney General — duties, 2-15-501.
Injunctions, Title 27, ch. 19.
Hearings by Commissioner, 33-1-701.
Appeals from Commissioner, 33-1-711.
Premium changes and cancellation — property or casualty insurance — unfair trade practices, 33-15-1121.

33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders if no such appeal is taken or, in event of such an appeal, upon final decision of the court if the court

affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in 33-18-1003(3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

History: En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.

Cross-References

General penalty — Montana Insurance Code violations, 33-1-104.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's orders, 33-1-711.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-18-1005. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 33-18-1004 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a $10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.1.

Cross-References

Attorney General — duties, 2-15-501.

County Attorneys — duties, 7-4-2716.

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

33-18-1006. Desist orders for prohibited practices. Violations of 33-18-221 through 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

History: En. Sec. 5, Ch. 554, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

CHAPTER 19

INSURANCE INFORMATION AND PRIVACY PROTECTION

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Chapter Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Part 1

General Provisions

33-19-101. Short title. This chapter may be cited as the "Insurance Information and Privacy Protection Act".

History: En. Sec. 1, Ch. 580, L. 1981.

33-19-102. Purpose. The purpose of this chapter is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, insurance producers, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

History: En. Sec. 2, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-103. Scope. (1) The obligations imposed by this chapter apply to those insurance institutions, insurance producers, or insurance-support organizations that, on or after July 1, 1982:

(a) in the case of life, health, or disability insurance:

(i) collect, receive, or maintain information in connection with insurance transactions that pertains to natural persons who are residents of this state; or

(ii) engage in insurance transactions with applicants, individuals, or policyholders who are residents of this state; and

(b) in the case of property or casualty insurance:

(i) collect, receive, or maintain information in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; or

(ii) engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(2) The rights granted by this chapter extend to:

(a) in the case of life, health, or disability insurance, the following persons who are residents of this state:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions; and

(b) in the case of property or casualty insurance, the following persons:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(3) For the purposes of this section, a person is considered a resident of this state if the person's last-known mailing address, as shown in the records of the insurance institution, insurance producer, or insurance-support organization, is located in this state.

(4) This chapter does not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

History: En. Sec. 3, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution which the insurance producer represents and which is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution which specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis; or

(ii) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means any person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the

power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101. "Insurance institution" does not include insurance producers or insurance-support organizations.

(11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(12) (a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, insurance institutions, medical care institutions, and medical professionals.

(13) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion thereof containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

(15) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(16) "Medical professional" means a person licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech therapist.

(17) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(20) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone he is not;

(b) pretends to represent a person he is not in fact representing;

(c) misrepresents the true purpose of the interview; or

(d) refuses to identify himself upon request.

(22) "Privileged information" means any individually identifiable information that:

(a) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection will be considered "personal information" under this chapter if it is disclosed in violation of 33-19-306.

(23) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state.

History: En. Sec. 4, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Part 2
Information Gathering

33-19-201. Pretext interviews prohibited — exception. (1) Except as provided in subsection (2), an insurance institution, insurance producer, or insurance-support organization may not use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction.

(2) A pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim when based upon specific information available for review by the commissioner that there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

History: En. Sec. 5, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Fraud, 28-2-404 through 28-2-406.

33-19-202. Notice of insurance information practices. (1) An insurance institution or insurance producer shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice shall be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice is required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice is required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), (13), and (15) of 33-19-306 and the circumstances under which such disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) such information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf.

History: En. Sec. 6, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-203. Marketing and research surveys. An insurance institution or insurance producer shall clearly specify the questions that are designed to obtain information from an individual in connection with an insurance transaction solely for marketing or research purposes.

History: En. Sec. 7, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-204. Content and disclosure of authorization forms. Notwithstanding any other provision of law of this state, an insurance institution, insurance producer, or insurance-support organization may not utilize as its disclosure authorization form in connection with insurance transactions a form or statement that authorizes the disclosure of personal or privileged information about an individual to the insurance institution, insurance producer, or insurance-support organization unless the form or statement:

(1) is written in plain language;

(2) is dated;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance producer and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time such authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

History: En. Sec. 8, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-205. Investigative consumer reports. (1) An insurance institution, insurance producer, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or insurance producer informs the individual:

(a) that he may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to 33-19-301, he is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or insurance producer, the insurance institution or insurance producer shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or insurance producer desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interview, if requested.

History: En. Sec. 9, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 3
Disclosure of Information

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

33-19-301. Access to recorded personal information. (1) If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, insurance producer, or insurance-support organization, the insurance institution, insurance producer, or insurance-support organization shall, within 30 business days from the date such request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, insurance producer, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, insurance producer, or insurance-support organization has disclosed the personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, insurance producers, insurance-support organizations, or other persons to whom such information is normally disclosed; and

(d) provide the individual with a summary of the procedures he may use to request correction, amendment, or deletion of recorded personal information.

(2) Personal information provided pursuant to subsection (1) must identify the source of the information if such source is an institutional source.

(3) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, insurance producer, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, insurance producer, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and at the request of the affected individual shall consult with the affected individual.

(4) Except for personal information provided under 33-19-303, an insurance institution, insurance producer, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(5) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, insurance producer, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(6) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(7) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

History: En. Sec. 10, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-302. Correction, amendment, or deletion of recorded personal information. (1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend, or delete any recorded personal information in its possession about the individual, an insurance institution, insurance producer, or insurance-support organization shall either:

(a) correct, amend, or delete the portion of the recorded personal information in dispute; or

(b) notify the individual of:

(i) its refusal to make such correction, amendment, or deletion;

(ii) the reasons for the refusal; and

(iii) the individual's right to file a statement as provided in subsection (3).

(2) If the insurance institution, insurance producer, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance institution, insurance producer, or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment, or fact of deletion to:

(a) any person specifically designated by the individual who may have, within the preceding 2 years, received such recorded personal information;

(b) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding 7 years, but the correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(c) any insurance-support organization that furnished the personal information which has been corrected, amended, or deleted.

(3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual may file with the insurance institution, insurance producer, or insurance-support organization:

(a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and

(b) a concise statement of the reasons why the individual disagrees with the insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.

(4) If an individual files either statement described in subsection (3), the insurance institution, insurance producer, or insurance-support organization shall:

(a) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of individual's statement and have access to it;

(b) in any subsequent disclosure by the insurance institution, insurance producer, or insurance-support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(c) furnish the statement to the persons in the manner specified in subsection (2).

(5) The rights granted individuals by this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to natural persons by this subsection do not extend to information about them

that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(6) For the purposes of this section, the term "insurance-support organization" does not include consumer reporting agency.

History: En. Sec. 11, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-303. Reasons for adverse underwriting decisions. (1) If an adverse underwriting decision is made, the insurance institution or insurance producer responsible for the decision shall:

(a) either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he may receive the specific reason or reasons in writing; and

(b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (2) and 33-19-301 and 33-19-302.

(2) If a written request is received within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance institution or insurance producer shall within 21 business days from the date of receipt of the written request furnish the person:

(a) the specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (1)(a);

(b) the specific items of personal and privileged information that support those reasons; however:

(i) the insurance institution or insurance producer is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(ii) specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or insurance producer prefers; and

(c) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (2)(b), except that the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or insurance producer prefers.

(3) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf.

(4) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (1) may be given orally.

History: **En. Sec. 12, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Requirements on users of consumer reports, 31-3-131.

33-19-304. Information concerning previous adverse underwriting decisions. An insurance institution, insurance producer, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual unless the inquiry also requests the reasons for any previous adverse underwriting decision and the individual is advised of the source of the information; or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests the reasons why insurance coverage was previously obtained through a residual market mechanism and the individual is advised of the source of information.

History: **En. Sec. 13, Ch. 580, L. 1981; amd. Sec. 8, Ch. 518, L. 1983; amd. Sec. 1, Ch. 713, L. 1989.**

33-19-305. Previous adverse underwriting decisions. An insurance institution or insurance producer may not base an adverse underwriting decision in whole or in part:

(1) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism, but an insurance institution or insurance producer may base an adverse underwriting decision on further information obtained from an insurance institution or insurance producer responsible for a previous adverse underwriting decision;

(2) on personal information received from an insurance-support organization whose primary source of information is insurance institutions, but an insurance institution or insurance producer may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

History: **En. Sec. 14, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.**

33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; and

(iii) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, provided such disclosure is reasonably necessary:

(a) to enable such person to perform a business, professional, or insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization; or

(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance-support organization; or

(b) to enable such person to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, insurance producer, insurance-support organization, or self-insurer if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, insurance producer, or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority.

(7) Disclosure may be made to a law enforcement or other government authority:

(a) to protect the interests of the insurance institution, insurance producer, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, insurance producer, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure may be made as otherwise permitted or required by law.

(9) Disclosure may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) Disclosure may be made for the purpose of conducting actuarial or research studies, provided:

(a) no individual may be identified in any actuarial or research report;

(b) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(c) the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization.

(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:

(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.

(13) Disclosure may be made to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer or the marketing of an insurance product or service if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(14) Disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

(15) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(16) Disclosure may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

(17) Disclosure may be made to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(18) Disclosure may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

History: En. Sec. 15, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Part 4
Enforcement

33-19-401. Power of the commissioner. (1) The commissioner has the power to examine and investigate the affairs of every insurance institution or insurance producer doing business in this state to determine whether the insurance institution or insurance producer has been or is engaged in any conduct in violation of this chapter.

(2) The commissioner has the power to examine and investigate the affairs of every insurance-support organization acting on behalf of an insurance institution or insurance producer that either transacts business in this state or transacts business outside this state which has an effect on a person residing in this state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this chapter.

History: En. Sec. 16, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-402. Hearings. The commissioner shall hold a hearing whenever he has reason to believe that an insurance institution, insurance producer, or insurance-support organization has been or is engaged in conduct in this state that violates this chapter or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this chapter. Hearings conducted under this section are governed by Title 2, chapter 4 and Title 33, chapter 1, part 7.

History: En. Sec. 17, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-403. Service of process — insurance-support organizations. For the purpose of this chapter, an insurance-support organization transacting business outside this state that has an effect on a person residing in this state is considered to have appointed the commissioner to accept service of process on its behalf. The commissioner shall mail a copy of the notice by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner.

History: En. Sec. 18, Ch. 580, L. 1981.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-19-404. Hearing determination. (1) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, insurance producer, or insurance-support organization charged has engaged in conduct or practices in violation of this chapter, the commissioner shall reduce his findings and conclusions to writing and shall issue and cause them to be served upon the insurance institution, insurance producer, or insurance-support organization as provided by law.

(2) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, insurance producer, or insurance-support organization charged has not engaged in conduct or practices in violation of this chapter, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. The report shall be served upon the insurance institution, insurance producer, or insurance-support organization charged and upon the person or persons if any, whose rights under this chapter were allegedly violated, in the manner provided by law for service of agency orders.

History: En. Sec. 19, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-405. Civil penalties. If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of this chapter, the commissioner may order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations.

History: En. Sec. 20, Ch. 580, L. 1981; amd. Sec. 4, Ch. 101, L. 1985.

33-19-406. Judicial review of orders and reports. Any person subject to an order of the commissioner under 33-1-706 or 33-19-405 or any person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711.

History: En. Sec. 21, Ch. 580, L. 1981; amd. Sec. 5, Ch. 101, L. 1985.

33-19-407. Individual remedies. (1) If any insurance institution, insurance producer, or insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect to the rights granted under those sections, any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, insurance producer, or insurance-support organization that discloses information in violation of 33-19-306 is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of 33-19-306.

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter.

History: En. Sec. 22, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-408. Immunity. A cause of action or claim for relief in the nature of defamation, invasion of privacy, or negligence does not arise against any person for disclosing personal or privileged information in accordance with this chapter, nor does such a cause of action or claim for relief arise against any person for furnishing personal or privileged information to an insurance institution, insurance producer, or insurance-support organization. However, this section does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

History: En. Sec. 23, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-409. Obtaining information under false pretenses. Any person who knowingly and willfully obtains information about an individual from an insurance institution, insurance producer, or insurance-support organization under false pretenses shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

History: En. Sec. 24, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

CHAPTER 20

LIFE INSURANCE

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Chapter Cross-References

Police protective association — salary deduction for group life insurance, 7-32-4122.

Deferred compensation — used to purchase life insurance and annuities, 19-50-102.

Assignments for benefit of creditors — exemption for general assignment, 31-2-227.

Denial of insurance — credit report — consumer's rights, 31-3-131.

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Discrimination prohibited — nongender insurance law, 49-2-309.

Disposition of unclaimed property, Title 70, ch. 9.

Physicians' liens — exemptions, 71-3-1118.

Homicide — effect on life insurance, 72-2-813.

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Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

33-20-101. Scope. (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114 and 33-20-131 apply to group life insurance and group annuities.

History: En. Sec. 295, Ch. 286, L. 1959; R.C.M. 1947, 40-3801; amd. Sec. 149, Ch. 575, L. 1981; amd. Sec. 6, Ch. 699, L. 1991; amd. Sec. 22, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 at beginning of (2) inserted reference to 33-20-114; and made minor changes in style.

Cross-References

Accidental death incidental to casualty insurance, 33-1-206.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

Group life insurance, Title 33, ch. 20, parts 10 through 12.

33-20-102. Industrial life insurance defined. For the purposes of this code, industrial life insurance is that form of life insurance written under policies of face amount of $2,000 or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969; R.C.M. 1947, 40-3802.

Cross-References

Attachment of application — exception, 33-15-402.

33-20-103. Standard provisions required — exceptions. (1) No policy of life insurance other than group and pure endowments with or without return of premiums or of premiums and interest shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-108, 33-20-110 through 33-20-116, and 33-20-131.

(2) This section shall not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(3) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

History: En. Sec. 297, Ch. 286, L. 1959; R.C.M. 1947, 40-3803; amd. Sec. 83, Ch. 370, L. 1987.

33-20-104. Grace period. There shall be a provision that a grace period of 30 days or, at the option of the insurer, of 1 month of not less than 30 days or of 4 weeks in the case of industrial life insurance policies, the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; but if a claim arises under the policy during such period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds.

History: En. Sec. 298, Ch. 286, L. 1959; R.C.M. 1947, 40-3804.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-105. Incontestability. There shall be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

History: En. Sec. 299, Ch. 286, L. 1959; R.C.M. 1947, 40-3805.

33-20-106. Entire contract. There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties and, if the application is so made a part of the policy, that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

History: En. Sec. 300, Ch. 286, L. 1959; R.C.M. 1947, 40-3806.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Fraud, 28-2-404 through 28-2-406.

Interpretation of written contracts — Statute of Frauds, Title 28, ch. 2, part 9.

Representations and warranties — applications other than life insurance, 33-15-403.

33-20-107. Misstatement of age. There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

History: En. Sec. 301, Ch. 286, L. 1959; R.C.M. 1947, 40-3807.

33-20-108. Dividends. (1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy, provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

(a) payable in cash; or

(b) applied to any one of such other dividend options as may be provided by the policy.

(3) If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable.

(4) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2)(a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(5) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

(6) In participating industrial life insurance policies, in lieu of the provision required in subsections (1) through (5) above, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

History: En. Sec. 302, Ch. 286, L. 1959; R.C.M. 1947, 40-3808.

Cross-References

Standard nonforfeiture law — life insurance, Title 33, ch. 20, part 2.

Standard nonforfeiture law — individual deferred annuities, Title 33, ch. 20, part 5.

33-20-109. Renumbered 33-20-131 by Code Commissioner, 1985.

33-20-110. Table of values. There shall be a table showing in figures the loan value, if required under 33-20-131, and the cash surrender values and nonforfeiture benefits in accordance with 33-20-202(1)(e), either during the first 20 policy years or during the term of the policy, whichever is shorter.

History: En. Sec. 304, Ch. 286, L. 1959; R.C.M. 1947, 40-3810.

33-20-111. Table of installments. In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

History: En. Sec. 305, Ch. 286, L. 1959; R.C.M. 1947, 40-3811.

33-20-112. Reinstatement. There shall be a provision that the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, with interest on all premiums in arrears at a rate not exceeding 6% per annum compounded annually and with interest on any indebtedness at a rate as provided in 33-20-132 through 33-20-136, unless:

(1) the policy has been surrendered for its cash surrender value;

(2) its cash surrender value has been exhausted; or

(3) the paid-up term insurance, if any, has expired.

History: En. Sec. 306, Ch. 286, L. 1959; R.C.M. 1947, 40-3812; amd. Sec. 7, Ch. 191, L. 1985.

33-20-113. Payment of premiums. There shall be a provision relative to the payment of premiums.

History: En. Sec. 307, Ch. 286, L. 1959; R.C.M. 1947, 40-3813.

33-20-114. Payment of claims — interest. (1) There shall be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement shall be made upon receipt of proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant.

(2) There shall be a provision, which may be made by endorsement, that settlement be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement shall include interest from the 30th day until settlement. Interest shall be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer after October 1, 1985, regardless of whether those provisions are included in the policy.

History: En. Sec. 308, Ch. 286, L. 1959; R.C.M. 1947, 40-3814; amd. Sec. 1, Ch. 469, L. 1985.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to pay claims promptly, 33-18-232 through 33-18-235.

33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the personal representative of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy.

(5) The provisions of 33-20-114(2) shall be incorporated into an industrial life insurance policy and are applicable as set out in that subsection.

History: En. Sec. 309, Ch. 286, L. 1959; R.C.M. 1947, 40-3815; amd. Sec. 150, Ch. 575, L. 1981; amd. Sec. 2, Ch. 469, L. 1985.

33-20-116. Title. There shall be a title on the policy, briefly describing the same.

History: En. Sec. 310, Ch. 286, L. 1959; R.C.M. 1947, 40-3816.

33-20-117. Nonforfeiture rights — policies issued before operative date. (1) This section shall apply only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured, without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the insurer of such policy, less 2 1/2% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid.

History: En. Sec. 326, Ch. 286, L. 1959; R.C.M. 1947, 40-3832.

33-20-118. Contestability — excluded or restricted coverage. A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

History: En. Sec. 311, Ch. 286, L. 1959; R.C.M. 1947, 40-3817.

33-20-119. Incontestability — limitation on liability after reinstatement of life insurance or annuity. (1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability might have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

History: En. Sec. 322, Ch. 286, L. 1959; R.C.M. 1947, 40-3828.

33-20-120. Policy settlements — holding proceeds — indebtedness deducted from proceeds. (1) Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

(2) In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

(a) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy; and

(b) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

History: En. Secs. 323, 324, Ch. 286, L. 1959; R.C.M. 1947, 40-3829, 40-3830.

33-20-121. Prohibited provisions — limitations on liability. (1) A policy of life insurance may not be delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in military action;

(ii) as a result of aviation or any air travel or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide, while seriously mentally ill or otherwise. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

History: En. Sec. 320, Ch. 286, L. 1959; R.C.M. 1947, 40-3826; amd. Sec. 28, Ch. 198, L. 1979; amd. Sec. 7, Ch. 699, L. 1991; amd. Sec. 23, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near end of (2), before "with adjustment", inserted "or by any other method more favorable to the policyholder"; and made minor changes in style.

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

33-20-122. Prohibited provisions — industrial life insurance. No policy of industrial life insurance shall contain any of the following provisions:

(1) a provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer;

(2) a provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical, or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within 2 years prior to the issuance of the policy, received institutional, hospital, medical, or surgical treatment or attention and if the insured or claimant under the policy fails to show that

the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk;

(3) a provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

History: **En. Sec. 321, Ch. 286, L. 1959; R.C.M. 1947, 40-3827.**

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

33-20-123. Prohibited policy plans — life insurance policies or annuity contracts. (1) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group or under any other similar plan.

(2) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision shall not be deemed to prohibit the payment or allowance of regular annual dividends or “savings” under participating forms of policies or contracts or prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders, or mortality either in general or as resulting from particular classifications of policies.

History: **En. Sec. 327, Ch. 286, L. 1959; R.C.M. 1947, 40-3833.**

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

33-20-124. Policy provisions — conformity with state statutes. Each policy regulated by this part must contain a provision or the equivalent thereto as follows:

“Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy.”

History: **En. Sec. 22, Ch. 798, L. 1991.**

33-20-125 and 33-20-126 reserved.

33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision — summary required. At the time of policy delivery, a summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits or accelerated benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the summary upon the applicant’s request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits.

History: En. Sec. 3, Ch. 152, L. 1991; amd. Sec. 24, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in introductory clause, in (1), and in (3) inserted reference to accelerated benefits; and made minor changes in style.

33-20-128. Life insurance policy paying long-term benefits — quarterly report. When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a quarterly report must be provided to the policyholder. The report must include:

(1) the amount of long-term care benefits paid out during each month of the quarter;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining.

History: En. Sec. 4, Ch. 152, L. 1991.

33-20-129 and 33-20-130 reserved.

33-20-131. Policy loan or certificate loan. (1) Subject to the provisions of 33-20-101(2) and except as provided in 33-20-132 through 33-20-136, there must be a provision that after 3 full years' premiums have been paid and after the policy or certificate has a cash surrender value and while a premium is not in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy or certificate and on the sole security of the policy or certificate, at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled to the loan, less than the loan value of the policy or certificate. The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies or certificates issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of the policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy or certificate loans, higher investment yield resulting from a reduction in policy or certificate loans because of the higher policy or certificate loan interest rate, and any additional income to the company resulting from the use of the higher interest rate in any manner. These benefits to the policyholder must be reflected through higher dividends, lower premiums, or both. The loan value of the policy must be at least equal to the cash surrender value at the end of the then current policy or certificate year, provided that the insurer may deduct, either from the loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining the cash surrender value (including interest then accrued but not due), an unpaid balance of the premium for the current policy or certificate year, and interest on the loan to the end of the current policy or certificate year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy or certificate may also provide that if interest on indebtedness is not paid when due, it must be added to the existing indebtedness and must bear interest at the same rate, and that if and when the total indebtedness on the policy or certificate, including interest due or accrued, equals or exceeds the amount of its loan value, the policy or certificate terminates and is void. The policy or certificate must reserve to the insurer the right to defer the granting of a loan, other than for the payment of a premium to the insurer, for 6 months after application for the loan. The policy or certificate, at the insurer's option, may provide for an automatic premium loan, subject to an election of the party entitled to elect.

(2) This section does not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies.

History: En. Sec. 303, Ch. 286, L. 1959; R.C.M. 1947, 40-3809; amd. Sec. 1, Ch. 179, L. 1979; amd. Sec. 6, Ch. 191, L. 1985; Sec. 33-20-109, MCA 1983; redes. 33-20-131 by Code Commissioner, 1985; amd. Sec. 8, Ch. 699, L. 1991.

33-20-132. Variable policy loan interest rates — purpose. The purpose of 33-20-132 through 33-20-136 is to permit and set guidelines for life insurers to include in life insurance policies issued after October 1, 1985, a provision for periodic adjustment of policy loan interest rates.

History: En. Sec. 1, Ch. 191, L. 1985.

33-20-133. Variable interest rates — exclusions from application. The provisions of 33-20-132 through 33-20-136 do not apply to:

(1) term policies;

(2) term insurance benefits provided by rider or supplemental policy provisions; or

(3) industrial life insurance policies except as provided in 33-20-112.

History: En. Sec. 2, Ch. 191, L. 1985.

33-20-134. Variable interest rates — published monthly average defined. For purposes of 33-20-132 through 33-20-136, the "published monthly average" means:

(1) Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, incorporated; or

(2) in the event that Moody's corporate bond yield average—monthly average corporates is no longer published, a substantially similar average, established by rule of the commissioner.

History: En. Sec. 3, Ch. 191, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-135. Variable interest rates on policy loans. (1) (a) Life insurance policies issued on or after October 1, 1985, may have a provision permitting policy loan interest rates as follows:

(i) a maximum interest rate of not more than 8% a year; or

(ii) an adjustable maximum interest rate established from time to time by the life insurer as permitted by 33-20-132 through 33-20-136.

(b) A life insurer is not permitted to issue policies containing variable rates of interest on policy loans under subsection (1)(a)(ii) unless the insurer also makes available policies, which may or may not be on the same plan of insurance, with fixed rates of interest on policy loans under subsection (1)(a)(i).

(2) The rate of interest charged on a policy loan made under subsection (1)(a)(ii) may not exceed the greater of:

(a) the published monthly average for the calendar month ending 2 months before the date on which the rate is determined; or

(b) the rate used to compute the cash surrender values under the policy during the applicable period plus 1% a year.

(3) If the maximum rate of interest is determined pursuant to subsection (1)(a)(ii), the policy must contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(4) The maximum rate for each policy must be determined at regular intervals that must occur at least once every 12 months, but may not occur more frequently than once in any 3-month period. At the intervals specified in the policy, the rate being charged:

(a) may be increased whenever an increase as determined under subsection (2) would increase the rate by 0.5% or more a year;

(b) must be reduced whenever a reduction as determined under subsection (2) would decrease the rate by 0.5% or more a year.

(5) The life insurer shall:

(a) notify the policyholder of the initial rate of interest on the loan at the time a cash loan is made;

(b) notify the policyholder, with respect to premium loans, of the initial rate of interest on the loan as soon as practical after making the initial loan. Notice does not have to be given to the policyholder when a further premium loan is added, except as provided in subsection (5)(c).

(c) send reasonable advance notice of any increase in the rate to policyholders with loans; and

(d) include in the notices required by this subsection (5) the substance of subsection (1) and the frequency of rate determinations as provided in subsection (3).

(6) The policy may provide that if interest on any indebtedness is not paid when due, the interest will be added to the existing indebtedness and will bear interest at the same rate as the indebtedness.

(7) The loan value of the policy must be determined in accordance with the provisions of 33-20-131, but no policy may be terminated in a policy year solely as a result of a change in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until the time at

which the policy would otherwise have terminated if there had been no interest rate change during that policy year.

(8) The substance of the pertinent provisions of subsections (1) and (3) must be set forth in the policies to which they apply.

(9) For purposes of this section, the following definitions apply:

(a) "Policy loan" includes any premium loan made under a policy used to pay one or more premiums that were not paid to the life insurer as they became due. The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after the lapse of a policy.

(b) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(c) "Policy" includes certificates issued by a fraternal benefit society and annuity contracts that provide for policy loans.

(10) No other provision of law applies to policy loan interest rates unless it is made specifically applicable to such rates.

History: En. Sec. 4, Ch. 191, L. 1985.

33-20-136. Variable interest rates — applicability to policies issued before October 1985. The provisions of 33-20-132 through 33-20-135 do not apply to any insurance contract issued before October 1, 1985, unless the policyholder agrees in writing to the applicability of such provisions.

History: En. Sec. 5, Ch. 191, L. 1985.

33-20-137 through 33-20-140 reserved.

33-20-141. Notice required for cancellation. No insurer may cancel a life insurance policy or annuity for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last-known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with the grace period required by 33-20-104.

History: En. Sec. 1, Ch. 723, L. 1985.

33-20-142. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited, except as to any nonforfeiture options provided for by a life insurance policy.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard

practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from the due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-20-141 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: En. Sec. 2, Ch. 723, L. 1985; amd. Sec. 1, Ch. 713, L. 1989.

33-20-143 through 33-20-150 reserved.

33-20-151. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 30, Ch. 582, L. 1989.

Part 2

Standard Nonforfeiture Law Life Insurance

Part Cross-References

Nonforfeiture rights — applicable to policies issued prior to effective date of part, 33-20-117.

33-20-201. Short title. This part shall be known as the "Standard Nonforfeiture Law for Life Insurance".

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(1); amd. Sec. 5, Ch. 346, L. 1979.

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-20-202. Nonforfeiture provisions. (1) In the case of policies issued on or after the operative date of this part as defined in 33-20-213, no policy of life insurance, except as set forth in 33-20-212, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this section and are essentially in compliance with 33-20-210:

(a) that in the event of default in any premium payment after premiums have been paid for at least 1 full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this part. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) that upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part;

(c) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default;

(d) that if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be specified in this part;

(e) for a policy that has on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provides an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. For each other policy a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state;

(g) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy;

(h) if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and

(i) a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(2) Any of the provisions or portions thereof set forth in subsections (1)(a) through (1)(i) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(2), (3); amd. Sec. 1, Ch. 498, L. 1983.

33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life. (1) Except as provided in subsection (2), any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-208 corresponding to premiums which would have fallen due on and after such anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) For any policy issued on or after the operative date of 33-20-208 that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part in the absence of the conditions that premiums shall have been paid for at least a specified period.

(5) For any family policy issued on or after the operative date of 33-20-208 that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for

an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such term insurance on the life of the spouse.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(4), (5); amd. Sec. 2, Ch. 498, L. 1983.

33-20-204. Adjusted premium. (1) This section does not apply to policies issued on or after the operative date of 33-20-208.

(2) (a) Except as provided in subsection (3), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 2% of the amount of the insurance if the insurance be uniform in amount or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(iii) 40% of the adjusted premium for the first policy year;

(iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(b) In applying the percentages specified in subsections (iii) and (iv) above, no adjusted premiums shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto.

(c) Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(d) (i) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsections (a) and (b) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(ii) In the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(3) (a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the

adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance.

(b) The foregoing items (a)(i) and (a)(ii) being calculated separately and as specified in subsection (2) except that, for the purposes of (ii), (iii), and (iv) of subsection (2), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (a)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a)(i) of this subsection.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(6), (7), (7-a); amd. Sec. 3, Ch. 498, L. 1983.

33-20-205. Calculation — mortality table — rates of interest. Except as otherwise provided in 33-20-206 and 33-20-207:

(1) All adjusted premiums and present values referred to in this part shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table.

(2) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table.

(3) All calculations shall be made on the basis of the rate of interest, not exceeding 3 1/2% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8).

33-20-206. Mortality tables — policies issued after operative date. (1) This section does not apply to ordinary policies issued on or after the operative date of 33-20-208.

(2) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-a); amd. Sec. 6, Ch. 346, L. 1979; amd. Sec. 4, Ch. 498, L. 1983.

33-20-207. Industrial policies — mortality tables. (1) This section does not apply to industrial policies issued on or after the operative date of 33-20-208.

(2) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 ½% per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section

after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968.

History: **En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-b); amd. Sec. 7, Ch. 346, L. 1979; amd. Sec. 5, Ch. 498, L. 1983.**

33-20-208. Mortality tables — interest rate adjusted premiums. (1)(a) This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted premiums for any policy are calculated on an annual basis and must be such a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(iii) 125% of the nonforfeiture net level premium as provided in subsection (2). No nonforfeiture net level premium is considered to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values are initially calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year,

excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(a) the sum of:

(i) the then present value of the then future guaranteed benefits provided for by the policy; and

(ii) the additional expense allowance, if any; over

(b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and

(b) 125% of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the product of subsection (a) by the product of subsection (b):

(a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy;

(b) the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) Except as provided below, all adjusted premiums and present values referred to in this part are for policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values for policies of industrial insurance are calculated on the basis of the commissioner's 1961

standard industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in this subsection for policies issued in that calendar year; with the following exceptions and conditions:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables set forth in this subsection (8).

(f) Any ordinary mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(g) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2, part 5, rounded to the nearer 1/4 of 1%.

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative date of this section for such insurer. If an insurer makes no such election, the operative date of this section for such insurer is January 1, 1989.

History: En. Sec. 6, Ch. 498, L. 1983.

33-20-209. Determination of nonforfeiture values for special plans. For a plan of life insurance that provides for future premium determination the amounts of which are to be determined by the insurer based on then estimates of future experience or for a plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in 33-20-204 through 33-20-208:

(1) the commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by 33-20-204 through 33-20-208;

(2) the commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this part, as determined by rules promulgated by the commissioner.

History: En. Sec. 7, Ch. 498, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-210. Additional rules for calculating cash surrender values. (1) This section, in addition to all other applicable sections of this chapter, applies to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy upon default in a premium payment due on any policy anniversary is an amount that does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years subtracted from the sum of:

(a) the greater of zero and the basic cash value specified in subsection (2); and

(b) the present value of any existing paid-up additions less the amount of any indebtedness to the insurer under the policy.

(2) The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the insurer, if there had been no default less the then present value of the nonforfeiture factors, as provided in subsection (3), corresponding to premiums that would have fallen due on and after such anniversary date. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in 33-20-203 or 33-20-204, whichever is applicable, are the same as the effects

specified in 33-20-203 or 33-20-204, whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in 33-20-204 or 33-20-208, whichever is applicable. Except as is required by subsection (4), the percentage:

(a) must be the same percentage for each policy year between the second policy anniversary date and the later of the fifth policy anniversary date and the first policy anniversary date at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) must be such that no percentage after the later of the two policy anniversary dates specified in subsection (3)(a) applies to less than 5 consecutive policy years.

(4) No basic cash value may be less than the value that would be obtained if the adjusted premiums for the policy, as provided in 33-20-204 or 33-20-208, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(5) Adjusted premiums and present values referred to in this section must, for a particular policy, be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this part. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

(6) A cash surrender value available other than upon default in a premium payment due on a policy anniversary date and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment are determined consistently with provisions specified for determining the analogous minimum amounts in 33-20-202 through 33-20-204, 33-20-208, and 33-20-211. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in 33-20-211(4) must conform with the principles of this section.

History: En. Sec. 9, Ch. 498, L. 1983.

33-20-211. Calculation of values — other requisites. (1) Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values referred to in 33-20-203 through 33-20-208 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

(3) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions.

(4) Notwithstanding the provisions of subsections (1) and (3) of 33-20-203, additional benefits payable under the following circumstances shall be dis-

regarded in ascertaining cash surrender values and nonforfeiture benefits required by this part, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(a) in the event of death or dismemberment by accident or accidental means;

(b) in the event of total and permanent disability;

(c) as reversionary annuity or deferred reversionary annuity benefits;

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part would not apply;

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid up by reason of the death of a parent of the child; and

(f) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(9); amd. Sec. 8, Ch. 498, L. 1983.

33-20-212. Exceptions. (1) This part does not apply to:

(a) reinsurance;

(b) group insurance;

(c) a pure endowment;

(d) an annuity or reversionary annuity contract;

(e) a term policy of uniform amount that provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71 for which uniform premiums are payable during the entire term of the policy;

(f) a term policy of decreasing amount that provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in 33-20-204 through 33-20-208, is less than the adjusted premiums so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(g) a policy which provides no guaranteed nonforfeiture or endowment benefits for which the cash surrender value, if any, or present value of any paid-up nonforfeiture benefit at the beginning of any policy year, calculated as specified in 33-20-203 through 33-20-208, does not exceed 2.5% of the amount of insurance at the beginning of the same policy year;

(h) a policy that is delivered outside this state through an insurance producer or other representative of the insurer issuing the policy.

(2) For purposes of subsection (1), the age at expiry for a joint term life insurance policy is the age at expiry of the oldest life.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(10); amd. Sec. 10, Ch. 498, L. 1983; amd. Sec. 1, Ch. 713, L. 1989.

33-20-213. Operative date. After July 1, 1945, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this part, except 33-20-206 and 33-20-207, after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this part, except 33-20-206 and 33-20-207, shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this part, except 33-20-206 and 33-20-207, with respect to such policies and contracts for such insurer is January 1, 1948.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(11); amd. Sec. 24, Ch. 198, L. 1979.

Cross-References

Contracts prior to operative date, 33-2-522.

Contracts on or after this operative date, 33-2-523.

Part 3

Annuity Contract Provisions

33-20-301. Standard provisions — annuity and pure endowment contracts. (1) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in 33-20-302 through 33-20-307. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(2) This section shall not apply to contracts for deferred annuities included in or upon the lives of beneficiaries under life insurance policies.

History: En. Sec. 312, Ch. 286, L. 1959; R.C.M. 1947, 40-3818.

33-20-302. Grace period. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that there shall be a period of grace of 1 month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding 6% per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

History: En. Sec. 313, Ch. 286, L. 1959; R.C.M. 1947, 40-3819.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-303. Incontestability. If any statements other than those relating to age and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to 33-20-305, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

History: En. Sec. 314, Ch. 286, L. 1959; R.C.M. 1947, 40-3820; amd. Sec. 9, Ch. 798, L. 1991.

33-20-304. Entire contract. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

History: En. Sec. 315, Ch. 286, L. 1959; R.C.M. 1947, 40-3821.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Statute of Frauds — interpretation of written contracts, Title 28, ch. 2, part 9.

33-20-305. Misstatement of age. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

History: En. Sec. 316, Ch. 286, L. 1959; R.C.M. 1947, 40-3822; amd. Sec. 10, Ch. 798, L. 1991.

33-20-306. Dividends. If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

History: En. Sec. 317, Ch. 286, L. 1959; R.C.M. 1947, 40-3823.

33-20-307. Reinstatement. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within 1 year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding 6%

per annum payable annually. In cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

History: En. Sec. 318, Ch. 286, L. 1959; R.C.M. 1947, 40-3824.

Part 4

Reversionary Annuity Contract Provisions

33-20-401. Standard provisions. (1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in 33-20-302 through 33-20-306, except that under 33-20-302 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6% per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

History: En. Sec. 319, Ch. 286, L. 1959; R.C.M. 1947, 40-3825.

Part 5

Standard Nonforfeiture Law Individual Deferred Annuities

33-20-501. Short title. This part shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

History: En. Sec. 8, Ch. 346, L. 1979.

33-20-502. Application. This part does not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity or to any contract which is delivered outside this state through an insurance producer or other representative of the company issuing the contract.

History: En. Sec. 9, Ch. 346, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-20-503. Nonforfeiture provisions. In the case of contracts issued on or after the operative date of this part as defined in 33-20-513, no contract of annuity except as stated in 33-20-502 shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in 33-20-506 through 33-20-509 and 33-20-511;

(2) that if a contract provides for a lump-sum settlement at maturity or at any other time, than upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in 33-20-506, 33-20-507, 33-20-509, and 33-20-511. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of 6 months after demand therefor with surrender of the contract.

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

History: En. Sec. 10, Ch. 346, L. 1979.

33-20-504. Exception. Notwithstanding the requirements of 33-20-503, any deferred annuity contract may provide that if no consideration has been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid prior to such period would be less than $20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

History: En. Sec. 11, Ch. 346, L. 1979.

33-20-505. Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement

of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3% a year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 ½% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 ½% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge shall be the lesser of $30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of $75.

History: En. Sec. 12, Ch. 346, L. 1979.

33-20-506. Present value to equal minimum nonforfeiture amount. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

History: En. Sec. 13, Ch. 346, L. 1979.

33-20-507. Cash surrender benefits. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. No cash surrender benefit may be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

History: **En. Sec. 14, Ch. 346, L. 1979.**

33-20-508. Paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

History: **En. Sec. 15, Ch. 346, L. 1979.**

33-20-509. Maturity date. For the purpose of determining the benefits calculated under 33-20-507 and 33-20-508, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is the latest date for which election is permitted by the contract but may not be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

History: **En. Sec. 16, Ch. 346, L. 1979.**

33-20-510. Statement of noninclusion of certain death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

History: **En. Sec. 17, Ch. 346, L. 1979.**

33-20-511. Adjusted benefit. Any paid-up annuity, cash surrender, or death benefits available at any time other than on the contract anniversary under any contract with fixed scheduled consideration shall be calculated with allowance for the lapse of time and the payment of any scheduled consideration beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

History: En. Sec. 18, Ch. 346, L. 1979.

33-20-512. Calculation of benefits — special benefits excluded. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross consideration paid with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of 33-20-506 through 33-20-509 and 33-20-511, additional benefits payable in the event of total and permanent disability or as reversionary annuity or deferred reversionary annuity benefits or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amount paid-up annuity, cash surrender, and death benefits.

History: En. Sec. 19, Ch. 346, L. 1979.

33-20-513. Operative date. After July 1, 1979, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1981.

History: En. Sec. 20, Ch. 346, L. 1979.

Part 6

Variable Contracts

Part Cross-References

Contracts — generally, Title 28, ch. 2.
Interpretation of contracts, Title 28, ch. 3.
Domestic insurer — definition, 33-1-201.
Life insurance — definition, 33-1-208.

33-20-601. Short title. This part may be cited as the "Montana Variable Contract Law".

History: En. Sec. 1, Ch. 112, L. 1989.

33-20-602. Powers of commissioner. Except as provided in Title 30, chapter 10, parts 1 through 3, the commissioner has sole authority to regulate the issuance and sale of variable contracts and to adopt rules to carry out the purposes and provisions of this part.

History: En. Sec. 5, Ch. 112, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-603. Separate accounts for life insurance or annuities. (1) Subject to the provisions of subsection (2), a life insurer may establish one or more separate accounts and may allocate to those accounts the amounts necessary to provide for life insurance or annuities and benefits incidental to the life insurance or annuities, payable in fixed or variable amounts, or both. The amounts allocated to the accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (c):

(i) amounts allocated to a separate account and accumulations on the separate account may be invested and reinvested in any class of investment authorized under Title 33, chapter 2, part 8, if limitations under 33-2-806 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other prescribed matters that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in the commissioner's opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest in the account, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account.

History: En. Sec. 2, Ch. 112, L. 1989; amd. Sec. 25, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (1), before "life", deleted "domestic"; and made minor changes in style.

33-20-604. Contract to contain statement of essential features. A contract providing benefits payable in variable amounts delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of the variable benefits. A contract under which the benefits vary to reflect investment experience, including a group contract and a certificate evidencing the variable benefits issued thereunder, must state that the dollar amount will vary and must contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

History: En. Sec. 3, Ch. 112, L. 1989.

Cross-References

Insurance contracts — generally, Title 33, ch. 15.

33-20-605. Requirements for doing business. (1) No insurer may deliver or issue for delivery within this state a variable contract unless the insurer is authorized to transact life insurance or annuity business in this state and the commissioner is satisfied that its condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this state. In making such a determination, the commissioner must consider, among other things:

(a) the history and financial condition of the insurer;

(b) the character, responsibility, and fitness of the officers and directors of the insurer; and

(c) the laws and regulations under which the insurer is authorized in the state of domicile to issue variable contracts. For this purpose, the state of entry of an alien insurer is its place of domicile.

(2) The commissioner may consider an insurer to have met the provisions of this section if:

(a) the insurer is a subsidiary of an authorized life insurer or is affiliated with an authorized life insurer through common management or ownership; and

(b) either it, the parent, or the affiliated insurer meets the requirements of this section.

History: **En. Sec. 4, Ch. 112, L. 1989.**

33-20-606. Variable contracts to meet insurance contract requirements. (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to such a contract.

(3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees.

History: **En. Sec. 6, Ch. 112, L. 1989.**

Parts 7 through 9 reserved

Part 10

General Requirements for Group Life

33-20-1001. Group contracts required to meet group requirements. (1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in 33-20-1101 through 33-20-1106 and unless in compliance with the other applicable provisions of parts 10 through 12 of this chapter.

(2) Subsection (1) above shall not apply to life insurance policies insuring only individuals:

(a) related by blood, marriage, or legal adoption;

(b) having a common interest through ownership of a business enterprise or a substantial legal interest or equity therein and who are actively engaged in the management thereof; or

(c) otherwise having an insurable interest in each other's lives.

History: **En. Sec. 328, Ch. 286, L. 1959; R.C.M. 1947, 40-3901; amd. Sec. 151, Ch. 575, L. 1981.**

33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than five employees at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees.

History: En. Sec. 349, Ch. 286, L. 1959; R.C.M. 1947, 40-3922.

33-20-1003. Violations. Violations of parts 10 through 12 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 350, Ch. 286, L. 1959; R.C.M. 1947, 40-3923.

Part 11

Groups and Group Requirements

Part Cross-References

Group disability insurance — same group eligible, 33-22-501.

Physicians' liens — exemptions, 71-3-1118.

33-20-1101. Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding

any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

History: **En. Sec. 329, Ch. 286, L. 1959; R.C.M. 1947, 40-3902.**

33-20-1102. Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

History: **En. Sec. 330, Ch. 286, L. 1959; R.C.M. 1947, 40-3903.**

33-20-1103. Employer and labor union combinations — trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or

partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

History: En. Sec. 331, Ch. 286, L. 1959; R.C.M. 1947, 40-3904.

33-20-1104. Public employee groups. The lives of a group of individuals may be insured under a policy issued to an incorporated city, town, or village or an association or league of cities, towns, or villages, an independent school district, state college or university, any association of state employees, and any association of state, county, and city, town, or village employees and any combination of state, county, or city, town, or village employees and any department of the state or county government, which employer or association shall be deemed the policyholder, to insure the employees of any such incorporated city, town, or village, of any such independent school district, of any such state college and university, or of any such department of the state or county government or members of any association of state, county, or city, town, or village employees, for the benefit of persons other than the policyholder, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include retired employees. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder wholly from funds contributed by it as employer or partly from such funds and partly from funds contributed by the insured employees or wholly from funds contributed by the insured employees, except that:

(a) the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and

(b) the premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town, or village policyholder when authorized by the charter of such city, town, or village or as otherwise authorized by law.

(3) Such policy may be placed in force only if at least 75% of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(4) The policy must cover at least 10 employees at date of issue.

History: En. Sec. 332, Ch. 286, L. 1959; R.C.M. 1947, 40-3905.

Cross-References

Public employee group insurance, Title 2, ch. 18, parts 7 and 8.

33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75%

of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965; R.C.M. 1947, 40-3906; amd. Sec. 1, Ch. 617, L. 1985.

33-20-1106. Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union organized pursuant to the laws of the state of Montana or the Federal Credit Union Act, which shall be deemed the policyholder, to insure eligible members for amounts of insurance not in excess of the share balance of each member, based upon some plan which will preclude individual selection, for the benefit of someone other than the credit union or its officials and subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all the members of the credit union who meet standard physical requirement conditions of the insurer or all of any class or classes thereof determined by conditions pertaining to their age or to membership in the credit union or both.

(2) The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insured, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at the date of issue.

History: En. Sec. 334, Ch. 286, L. 1959; R.C.M. 1947, 40-3907.

Cross-References

Credit unions — insurance authorized, 32-3-609.

33-20-1107 through 33-20-1110 reserved.

33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103 may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1)(a), (1)(b), and (1)(c) of 33-20-1209. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

History: En. Sec. 336, Ch. 286, L. 1959; amd. Sec. 1, Ch. 215, L. 1977; R.C.M. 1947, 40-3909; amd. Sec. 25, Ch. 198, L. 1979; amd. Sec. 84, Ch. 370, L. 1987.

Part 12
Group Contract Provisions

Part Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-20-1201. Provisions required in group contracts. No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in 33-20-1202 through 33-20-1211 or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

(1) sections 33-20-1207 through 33-20-1211 shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

History: En. Sec. 337, Ch. 286, L. 1959; R.C.M. 1947, 40-3910.

Cross-References

Nonforfeiture provisions — standard life policies, Title 33, ch. 20, part 2.

33-20-1202. Grace period. The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

History: En. Sec. 338, Ch. 286, L. 1959; R.C.M. 1947, 40-3911.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-1203. Incontestability. The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime or unless it is contained in a written instrument signed by him.

History: En. Sec. 339, Ch. 286, L. 1959; R.C.M. 1947, 40-3912.

33-20-1204. Application — statements deemed representations. The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

History: En. Sec. 340, Ch. 286, L. 1959; R.C.M. 1947, 40-3913.

Cross-References

Representations and warranties — standard provision regarding applications, 33-15-403.

33-20-1205. Insurability. The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

History: En. Sec. 341, Ch. 286, L. 1959; R.C.M. 1947, 40-3914.

33-20-1206. Misstatement of age. The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

History: En. Sec. 342, Ch. 286, L. 1959; R.C.M. 1947, 40-3915.

33-20-1207. Payment of benefits. (1) The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(2) The provisions of 33-20-114(2) shall be incorporated into the group life insurance policy and are applicable as set out in that subsection.

History: En. Sec. 343, Ch. 286, L. 1959; R.C.M. 1947, 40-3916; amd. Sec. 3, Ch. 469, L. 1985.

33-20-1208. Certificate. The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211.

History: En. Sec. 344, Ch. 286, L. 1959; R.C.M. 1947, 40-3917.

33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy shall contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance, provided application for the individual policy shall be made and the first premium paid to the insurer within 31 days after such termination, and provided further that:

(a) the individual policy shall, at the option of such person, be on any one of the forms, including but not limited to term insurance, if the group policy so provides, then customarily issued by the insurer at the age and for the amount applied for and shall offer benefits at least equal to those under the group coverage;

(b) the individual policy shall, at the option of the insured, be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is insured under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue his coverage under the group policy during his employment notwithstanding reduction of his regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage shall be equal to that charged other members of the group. Such person's coverage under the group will cease if he subsequently becomes eligible for coverage under another group policy because of employment elsewhere.

History: En. Sec. 345, Ch. 286, L. 1959; R.C.M. 1947, 40-3918; amd. Sec. 1, Ch. 579, L. 1981.

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; or

(2) $10,000.

History: En. Sec. 346, Ch. 286, L. 1959; R.C.M. 1947, 40-3919; amd. Sec. 2, Ch. 579, L. 1981; amd. Sec. 9, Ch. 518, L. 1983.

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1211. Death pending conversion. The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with 33-20-1209 or 33-20-1210 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

History: En. Sec. 347, Ch. 286, L. 1959; R.C.M. 1947, 40-3920.

33-20-1212. Notice as to conversion right. If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice, but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

History: En. Sec. 348, Ch. 286, L. 1959; R.C.M. 1947, 40-3921.

33-20-1213. Policy provisions — conformity with state statutes. Each policy regulated by this part must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 22, Ch. 798, L. 1991.

CHAPTER 21

CREDIT LIFE AND DISABILITY INSURANCE

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Part 1

General Provisions

33-21-101. Short title. This chapter may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance".

History: En. Sec. 393, Ch. 286, L. 1959; R.C.M. 1947, 40-4202.

33-21-102. Purpose and scope. (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) Except as provided in subsection (3), this chapter applies to each policy, certificate of insurance, notice of proposed insurance, binder, endorsement, and rider of life insurance and disability insurance delivered or issued for delivery in Montana in connection with loans or other credit transactions for personal, family, or household purposes.

(3) This chapter does not apply to life insurance or disability insurance delivered or issued for delivery in connection with:

(a) a loan or other credit transaction of more than 15 years' duration;

(b) a credit transaction that is:

(i) secured by a first mortgage or deed of trust; and

(ii) made to finance the purchase of real property or the construction of a dwelling thereon or to refinance a prior credit transaction made for that purpose; or

(c) a credit transaction that is an isolated transaction on the part of the insurer and that is not related to an agreement or a plan for insuring debtors of the creditor.

History: (1)En. Sec. 392, Ch. 286, L. 1959; Sec. 40-4201, R.C.M. 1947; (2)En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974; Sec. 40-4203, R.C.M. 1947; R.C.M. 1947, 40-4201, 40-4203; amd. Sec. 2, Ch. 617, L. 1985; amd. Sec. 2, Ch. 156, L. 1989.

Cross-References

Real and personal property — choice by borrower, 33-18-501.

33-21-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor or joint debtors to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor or either of the joint debtors is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor or the lives of joint debtors pursuant to or in connection with a specific loan or other credit transaction.

(3) "Creditor" means:

(a) a lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction;

(b) any successor to the right, title, or interest of a lender, vendor, or lessor;

(c) an affiliate, associate, or subsidiary of a lender, vendor, or lessor;

(d) a director, officer, or employee of a lender, vendor, or lessor; or

(e) any other person in any way associated with a lender, vendor, or lessor.

(4) "Credit transaction" means a transaction by the terms of which, at a future date:

(a) repayment of money loaned is made;

(b) a loan commitment is made; or

(c) payment for goods, services, or property sold or leased is made.

(5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(7) "Open-end credit" means credit extended by a creditor under an agreement in which:

(a) the creditor reasonably contemplates repeated transactions;

(b) the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(c) the amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

History: En. Sec. 395, Ch. 286, L. 1959; R.C.M. 1947, 40-4204; amd. Sec. 3, Ch. 156, L. 1989; amd. Sec. 1, Ch. 179, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 179 in two places in (1) and in (2), after "debtor", inserted reference to joint debtors.

33-21-104. Existing insurance — choice of insurer. When credit life insurance or credit disability insurance is required as additional security for an indebtedness, the debtor, upon request to the creditor, has the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within Montana.

History: En. Sec. 405, Ch. 286, L. 1959; R.C.M. 1947, 40-4214; amd. Sec. 4, Ch. 156, L. 1989.

Cross-References

Retail installment sales — choice of insurer provided, 31-1-233.

33-21-105. Claims. (1) A claim must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. A claim must be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) A claim must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of the claimant to one specified.

(3) No plan or arrangement may be used whereby a person, partnership, or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

History: En. Sec. 404, Ch. 286, L. 1959; R.C.M. 1947, 40-4213; amd. Sec. 5, Ch. 156, L. 1989.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231, 33-18-232, 33-18-235.

33-21-106 through 33-21-110 reserved.

33-21-111. Rules — enforcement of chapter. The commissioner may, after notice and hearing, issue such rules as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules issued pursuant thereto and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

History: En. Sec. 406, Ch. 286, L. 1959; R.C.M. 1947, 40-4215.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General penalty — Montana Insurance Code, 33-1-104.

Promulgation of rules by Commissioner, 33-1-313.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions — stay of order, 33-1-711.

33-21-112. Judicial review. Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in 33-1-711.

History: En. Sec. 407, Ch. 286, L. 1959; R.C.M. 1947, 40-4216.

33-21-113. Penalties. In addition to any penalty provided by law, a person who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250 which may be recovered in a civil action, except that if the violation is found to be willful, the amount of the penalty is a sum not to exceed $1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, partnership, or corporation guilty of such violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711.

History: En. Sec. 408, Ch. 286, L. 1959; R.C.M. 1947, 40-4217; amd. Sec. 6, Ch. 156, L. 1989.

Cross-References

Legal actions by state agencies — notification of Attorney General required, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Part 2

Policy Requirements

Part Cross-References

Retail installment sales — general provisions regarding insurance, 31-1-233.

Consumer loans — applicability and limits, 32-5-306.

33-21-201. Form of issuance. An insurer may deliver or issue for delivery credit life insurance and credit disability insurance only in the following forms:

(1) individual policies of life insurance issued to debtors on a term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(3) group policies of life insurance issued to creditors providing insurance on the lives of debtors on a term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group credit life insurance policies to provide disability coverage;

(5) joint policies of life insurance issued to debtors providing insurance jointly on the lives of joint debtors on a term plan; or

(6) joint policies of disability insurance issued to debtors on a term plan insuring joint debtors or disability provisions in joint credit life insurance policies to provide disability coverage.

History: En. Sec. 396, Ch. 286, L. 1959; R.C.M. 1947, 40-4205; amd. Sec. 7, Ch. 156, L. 1989; amd. Sec. 2, Ch. 179, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 179 inserted (5) concerning joint term life insurance; inserted (6) concerning disability insurance policies; and made minor changes in style.

33-21-202. Amount. (1) The initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness. If an indebtedness is repayable in substantially equal installments, the amount of credit life insurance may not exceed the scheduled or actual amount of unpaid indebtedness on the date of death, whichever is greater. The amount of credit life insurance written in connection with:

(a) a credit transaction repayable over a term in excess of 63 months or, at the option of the insurer, for a shorter term may not exceed the actual amount of unpaid indebtedness on the date of death, excluding any:

(i) unearned interest or finance charges; and

(ii) delinquency or extension exceeding 4 months;

(b) an open-end credit agreement having a credit limit exceeding $10,000 may not exceed the plan's credit limit;

(c) an agricultural loan commitment not exceeding 1 year may not exceed the amount of the loan commitment on a nondecreasing or level term plan; and

(d) an education loan commitment may be for the amount of the portion of the commitment that has not been advanced by the creditor.

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, may not exceed:

(a) the aggregate of the periodic scheduled unpaid installments of indebtedness; and

(b) the original indebtedness divided by the number of periodic installments.

History: En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974; R.C.M. 1947, 40-4206; amd. Sec. 8, Ch. 156, L. 1989.

Cross-References

Unfair trade practice — failure to promptly pay, 33-18-201.

33-21-203. Term. (1) The term of any credit life insurance or credit disability insurance commences, subject to acceptance by the insurer, on the date on which the debtor becomes obligated to the creditor. However, if a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy.

(2) When evidence of insurability is required and the evidence is furnished more than 30 days after the date on which the debtor becomes obligated to the creditor, the term of the insurance may commence on the date the insurer determines the evidence is satisfactory. In that event, the insurer shall make an appropriate refund or adjustment of any charge to the debtor for insurance.

(3) The term of the insurance may not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor, but the term of the insurance may be less than the term of the credit transaction to provide modified or partial coverage or extend beyond the maturity date to provide coverage consistent with 33-21-202(1)(a).

(4) If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in 33-21-206.

History: **En. Sec. 398, Ch. 286, L. 1959; R.C.M. 1947, 40-4207; amd. Sec. 9, Ch. 156, L. 1989.**

33-21-204. Policy or certificate delivered — time of delivery — provisions. (1) All credit life insurance and credit disability insurance sold must be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance, which individual policy or group certificate of insurance must be delivered to the debtor at the time the indebtedness is incurred except as hereinafter provided.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name of each debtor, the premium or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance coverage, the amount, term, and a brief description of the coverage provided or to be provided, must be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for or notice of proposed insurance must also refer exclusively to insurance coverage and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein. Upon approval by the insurer of the application for insurance or acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred, the insurer shall deliver the individual policy or group certificate of insurance to the debtor. The application or notice of proposed insurance must state that, upon acceptance by the insurer, the insurance becomes effective as of the date the indebtedness is incurred. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the amount of premium is less than that set forth in the notice of proposed insurance, the insurer shall make an appropriate refund.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance must, in addition to other requirements of law, set forth the name and home office address of the insurer, the name of each debtor or, in the case of a group certificate of insurance, the identity by name or otherwise of the debtor, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages, including the amount and term thereof and any exceptions, limitations, or restrictions, and must state that the benefits must be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess must be payable to a beneficiary, other than the creditor, named by the debtor or to his estate. If the term of the insurance is less than the term of the loan, that fact must be stated on the face of the individual policy or group certificate in not less than 10-point boldface type.

(4) For the purposes of subsections (1) and (2), an individual policy or group certificate of insurance delivered in connection with an open-end credit agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred.

History: En. Secs. 399, 400, Ch. 286, L. 1959; R.C.M. 1947, 40-4208, 40-4209; amd. Sec. 10, Ch. 156, L. 1989.

33-21-205. Filing, approval, and withdrawal of forms and rates — disapproval. (1) With respect to credit life insurance or credit disability insurance:

(a) a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider may not be delivered or issued for delivery in Montana unless it has been filed with and approved by the commissioner, in accordance with 33-1-501, and the regulatory official of the state in which it is issued; and

(b) a schedule of premium rates pertaining to a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider may not be used in Montana unless it has been filed with the commissioner.

(2) With respect to credit life insurance or credit disability insurance and in accordance with 33-1-501, the commissioner may disapprove a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider:

(a) for a reason listed in 33-1-502;

(b) if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits; or

(c) if it contains provisions that are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the insurance.

(3) If the commissioner notifies the insurer that a form is disapproved, it is unlawful for the insurer to issue or use the form.

(4) An insurer may not issue or use a form after the commissioner withdraws approval of the form pursuant to 33-1-501. An order or final determination of the commissioner under this section is subject to judicial review.

History: En. Sec. 401, Ch. 286, L. 1959; R.C.M. 1947, 40-4210; amd. Sec. 11, Ch. 156, L. 1989.

Cross-References

Commissioner to approve forms, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions, 33-1-711.

33-21-206. Premiums and refunds. (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise the schedules from time to time and shall file the revised schedules with the commissioner. No insurer may issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by 33-21-205.

(2) Each individual policy, group certificate of insurance, or notice of proposed insurance of credit life insurance and credit disability insurance must provide that, if the insurance is terminated before the scheduled maturity date of the indebtedness, any refund of premium or amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds must be filed with and approved by the commissioner.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life insurance or credit disability insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(5) Nothing in this chapter may be construed to authorize any payments for insurance prohibited under a statute, or rule thereunder, governing credit transactions.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967; R.C.M. 1947, 40-4211; amd. Sec. 12, Ch. 156, L. 1989.

33-21-207. Issuance of policies. Each policy, certificate of insurance, or notice of proposed insurance of credit life insurance and credit disability insurance must be delivered or issued for delivery in Montana only by an insurer authorized to transact insurance in Montana and must, except as provided in 33-17-103, be issued only through a licensed insurance producer.

History: En. Sec. 403, Ch. 286, L. 1959; R.C.M. 1947, 40-4212; amd. Sec. 13, Ch. 156, L. 1989; amd. Sec. 37, Ch. 16, L. 1991.

Cross-References

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CHAPTER 22

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33-22-1506 through 33-22-1510 reserved.

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33-22-1808. Establishment of classes of business.
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33-22-1818. Small employer carrier reinsurance program — board membership.
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Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Child support orders — statement concerning required health insurance coverage, 40-4-204.

Child support — health insurance coverage required — enforcement, 40-5-208.

Paternity orders — statement concerning required health insurance coverage, 40-6-116.

Discrimination prohibited — nongender insurance law, 49-2-309.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

Crime victims compensation claimants — release of insurance payment information concerning, 53-9-104.

Physicians' liens — exemptions, 71-3-1118.

Part 1
General Provisions

Part Cross-References

Collateral source reductions in actions arising from bodily injury or death — subrogation rights, 27-1-308.

33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, and 33-22-304, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance.

History: En. Sec. 351, Ch. 286, L. 1959; R.C.M. 1947, 40-4001; amd. Sec. 26, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in introductory clause inserted references to 33-22-107, 33-22-110, 33-22-114, 33-22-125, and 33-22-130 through 33-22-132; and made minor changes in style.

Cross-References

Disability coverage incidental to another insurance — exclusion from chapter, 33-1-206.

Definition — disability insurance, 33-1-207.

33-22-102. Third-party ownership. The word "insured", as used in parts 1 through 4 of this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

History: En. Sec. 379, Ch. 286, L. 1959; R.C.M. 1947, 40-4029.

Cross-References

Insurable interest — definition, 33-15-201.

33-22-103. Violations. Violations of parts 1 through 4 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 384, Ch. 286, L. 1959; R.C.M. 1947, 40-4034.

33-22-104 through 33-22-106 reserved.

33-22-107. Premium increase restriction — exception. (1) An insurer may not increase a premium in an individual's or an individual group's disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.

History: En. Sec. 2, Ch. 699, L. 1991.

33-22-108 and 33-22-109 reserved.

33-22-110. Preexisting conditions. (1) A policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

History: En. Sec. 34, Ch. 451, L. 1993.

33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: (1)En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971; Sec. 40-4108, R.C.M. 1947; (2)En. Sec. 2, Ch. 172, L. 1967; Sec. 40-4109, R.C.M. 1947; R.C.M. 1947, 40-4108, 40-4109; amd. Sec. 1, Ch. 258, L. 1981; amd. Sec. 20, Ch. 303, L. 1981; amd. Sec. 4, Ch. 324, L. 1981; amd. Sec. 1, Ch. 179, L. 1983; amd. Sec. 1, Ch. 302, L. 1985; amd. Sec. 14, Ch. 572, L. 1985; amd. Sec. 1, Ch. 606, L. 1987; amd. Sec. 39, Ch. 83, L. 1989; amd. Sec. 18, Ch. 97, L. 1989; amd. Sec. 1, Ch. 362, L. 1991; amd. Sec. 1, Ch. 628, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 628 near beginning of first sentence of (1), after "blanket policies", deleted "and all policies insuring the payment of compensation under the Workers' Compensation Act"; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 17, Ch. 628, L. 1993, provided: "Because of the decision in Wieland v. St. Compensation Mutual Insurance Fund, WCC No. 9208-6554, there is a conflict between the interpretation of 33-22-111 and Rule 24.29.1403, Administrative Rules of Montana, implementing 39-71-704, upheld in Garland v. Anaconda Co., 177 Mont. 240 (1978), upon which workers' compensation medical benefits were premised, the legislature, in order to resolve the conflict through the curative legislation in [section 1] [33-22-111], intends that [section 1] [33-22-

111] apply retroactively, within the meaning of 1-2-109, to all causes of action arising before [the effective date of this act]." Effective July 1, 1993.

Cross-References

Board of Social Work Examiners and Professional Counselors, 2-15-1854.

Inapplicability of this section to health service corporations, 33-30-102.

Licensed medical professions:

Physicians, Title 37, ch. 3.

Dentists, Title 37, ch. 4.

Osteopaths, Title 37, ch. 5.

Chiropodists (podiatrists), Title 37, ch. 6.

Pharmacists, Title 37, ch. 7.

Optometrists, Title 37, ch. 10.

Chiropractors, Title 37, ch. 12.

Clinical psychologists, Title 37, ch. 17.

Licensure of social workers, Title 37, ch. 22.

Professional counseling, Title 37, ch. 23.

Workers' Compensation Act, Title 39, ch. 71.

Hospital licensing, Title 50, ch. 5, part 2.

33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the disability insurance policy if rendered to him outside a Montana state institution.

(2) A disability insurance policy is considered issued in Montana if the insured purchasing the disability insurance policy is, at the time of the purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a disability insurance policy issued in Montana after February 14, 1973, the provision is void and the disability insurance policy will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the disability policy, which would be paid for the services if rendered outside a Montana state institution.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 1, Ch. 169, L. 1979.

Cross-References

State institutions — Department of Family Services, 52-1-105.

State institutions — Department of Corrections and Human Services, 53-1-202.

33-22-113. Disability insurance coverage of persons eligible for public medical assistance. No disability insurance policy providing hospital, medical, or surgical expense benefits delivered or issued for delivery in this state on or after July 1, 1979, may contain any provision denying or reducing such benefits for the reason that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Sec. 2, Ch. 169, L. 1979.

33-22-114. Coverage required for services provided by physician assistants-certified. An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage for health services provided by a physician assistant-certified as normally covered by contracts for services supplied by a physician if health care services that the physician assistant-certified is approved to perform are covered by the contract.

History: En. Sec. 7, Ch. 97, L. 1989.

Cross-References

Physician assistant-certified defined, 37-20-401.

33-22-115 through 33-22-120 reserved.

33-22-121. Notice required for cancellation or refusal to renew. (1) An insurer may not cancel or refuse to renew a disability insurance policy until the insurer has mailed or delivered to the named insured and to the policyowner, if they are not the same, at the last-known post office address shown in the records of the company, one written notice in addition to any billing statement, stating the date the cancellation or refusal to renew will become effective, which may not be less than:

(a) 30 days after the date of mailing or delivery of the notice of cancellation for nonpayment of premiums or a material misrepresentation contained in the application; or

(b) 90 days after the date of mailing or delivery of the notice of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.

(2) The notice requirements in subsection (1) run concurrently with any grace period required by 33-22-206.

History: En. Sec. 3, Ch. 723, L. 1985; amd. Sec. 1, Ch. 191, L. 1989.

33-22-122. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: **En. Sec. 4, Ch. 723, L. 1985; amd. Sec. 1, Ch. 713, L. 1989.**

33-22-123 and 33-22-124 reserved.

33-22-125. Independent chiropractic physical examination or review of records. (1) If a patient's attending health care professional is a licensed chiropractor, the following provisions govern the conduct of a utilization review of the health care services rendered to the patient by the chiropractor:

(a) If an independent physical examination is required by the insurer, it must be conducted by a chiropractor engaged in the practice of chiropractic in Montana.

(b) If a review of the patient's or the chiropractor's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of chiropractic. During an appeal or redetermination, the patient may, at his expense, request an independent review of the patient's or the chiropractor's records by a chiropractor engaged in the practice of chiropractic in Montana and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

(2) Nothing in this section prevents a health care insurer from requesting additional medical review of a patient's condition or treatment by another chiropractor or medical provider.

(3) The provisions of this section do not apply to routine claim administration or determination by an insurer.

(4) As used in this section, "health care insurer" means:

(a) an insurer who provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-108;

(e) an administrator as defined in 33-17-102; and

(f) any other entity regulated by the commissioner that provides health care coverage.

History: **En. Sec. 1, Ch. 727, L. 1991.**

33-22-126 through 33-22-129 reserved.

33-22-130. Coverage for adopted children from time of placement — preexisting conditions. (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from

placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

History: En. Sec. 1, Ch. 387, L. 1991; amd. Sec. 27, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber".

33-22-131. Coverage for phenylketonuria treatment. (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for the treatment of phenylketonuria.

(2) For purposes of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

History: En. Sec. 1, Ch. 80, L. 1989; amd. Sec. 28, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber"; and made minor changes in style.

Cross-References

Health maintenance organizations — coverage for phenylketonuria treatment, 33-31-102.

33-22-132. Coverage for mammography examinations. (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

History: En. Sec. 1, Ch. 663, L. 1991; amd. Sec. 29, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber"; and at beginning of (3) substituted "A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of" for "These services are subject to" and deleted former second sentence that read: "A minimum $70 payment must be made for each mammography examination performed."

Part 2

Individual Policy Requirements

Part Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

Life and disability insurance policy language simplification, 33-15-321 through 33-15-329.

33-22-201. Format and content. A policy of disability insurance may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations for the policy must be expressed in the policy.

(2) The time when the insurance takes effect and terminates must be expressed in the policy.

(3) The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age that may not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy may not give undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and 33-22-217 through 33-22-231, must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.

(7) Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page of the form.

(8) The policy may not contain a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, the person is permitted to return the policy within 10 days of its delivery, or a longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; R.C.M. 1947, 40-4002(1) thru (3), (5) thru (8); amd. Sec. 1, Ch. 342, L. 1979; amd. Sec. 30, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of (6), before "33-22-231", inserted "33-22-215 and 33-22-217 through"; and made minor changes in style.

33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2), each policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the provisions appear, except that the insurer may, at its option, substitute for one or more of the provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded individually by the applicable caption shown or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in a manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions that are the subject of 33-22-204 through 33-22-215 and 33-22-217 through 33-22-232 or any corresponding provisions which are used in accordance with the cited sections must be printed in the consecutive order of the provisions in the sections or, at the option of the insurer, any provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy is not in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

History: En. Secs. 353, 378, Ch. 286, L. 1959; R.C.M. 1947, 40-4003, 40-4028; amd. Sec. 26, Ch. 198, L. 1979; amd. Sec. 31, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of (3), before "33-22-232", inserted "33-22-215 and 33-22-217 through"; and made minor changes in style.

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification, 33-15-321 through 33-15-329.

33-22-203. Requirement of other jurisdictions — statutes — violation. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of parts 1 through 4 of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(3) No policy provision which is not subject to parts 1 through 4 of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

(4) A policy delivered or issued for delivery to any person in this state in violation of parts 1 through 4 of this chapter shall be held valid but shall be construed as provided in parts 1 through 4 of this chapter. When any provision in a policy subject to parts 1 through 4 of this chapter is in conflict with any provision of parts 1 through 4 of this chapter, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of parts 1 through 4 of this chapter.

History: En. Secs. 380, 381, Ch. 286, L. 1959; R.C.M. 1947, 40-4030, 40-4031.

33-22-204. Entire contract — changes. There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No insurance producer has authority to change this policy or to waive any of its provisions."

History: En. Sec. 354, Ch. 286, L. 1959; R.C.M. 1947, 40-4004; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Statute of Frauds — interpretation of written contracts, Title 28, ch. 2, part 9.

33-22-205. Time limit on certain defenses. (1) There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After 2 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 2-year period.

(2) No claim for loss incurred or disability (as defined in the policy) commencing after 2 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(2) Policy provision (1) of subsection (1) shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 2-year period or to limit the application of 33-22-222 through 33-22-226 in the event of misstatement with respect to age or occupation or other insurance.

(3) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the

case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of policy provision (1) of subsection (1) the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of 2 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

History: En. Sec. 355, Ch. 286, L. 1959; R.C.M. 1947, 40-4005; amd. Sec. 21, Ch. 303, L. 1981.

33-22-206. Grace period. (1) There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision:

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

History: En. Sec. 356, Ch. 286, L. 1959; R.C.M. 1947, 40-4006.

Cross-References

Computation of time — which days counted, 1-1-306.

33-22-207. Reinstatement. (1) There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any insurance producer duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such insurance producer requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(2) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(a) until at least age 50; or

(b) in the case of a policy issued after age 44, for at least 5 years from its date of issue.

History: En. Sec. 357, Ch. 286, L. 1959; R.C.M. 1947, 40-4007; amd. Sec. 1, Ch. 713, L. 1989.

33-22-208. Notice of claim. (1) There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose) or to any authorized insurance producer of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(2) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974; R.C.M. 1947, 40-4008; amd. Sec. 1, Ch. 713, L. 1989.

33-22-209. Claim forms. There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."

History: En. Sec. 359, Ch. 286, L. 1959; R.C.M. 1947, 40-4009.

33-22-210. Proofs of loss. There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required."

History: **En. Sec. 360, Ch. 286, L. 1959; R.C.M. 1947, 40-4010.**

Cross-References

Requirement for redundant proofs of loss — unfair trade practice, 33-18-201.

33-22-211. Time of payment of claims. There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

History: **En. Sec. 361, Ch. 286, L. 1959; R.C.M. 1947, 40-4011.**

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231 through 33-18-235.

33-22-212. Payment of claims. (1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$.... (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

History: **En. Sec. 362, Ch. 286, L. 1959; R.C.M. 1947, 40-4012.**

33-22-213. Physical examination and autopsy. There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

History: En. Sec. 363, Ch. 286, L. 1959; R.C.M. 1947, 40-4013.

Cross-References

Autopsy — limitations, 50-21-103.

33-22-214. Legal actions. There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the written proof of loss is required to be furnished."

History: En. Sec. 364, Ch. 286, L. 1959; R.C.M. 1947, 40-4014.

33-22-215. Change of beneficiary. (1) There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries or to any other changes in this policy."

(2) The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

History: En. Sec. 365, Ch. 286, L. 1959; R.C.M. 1947, 40-4015.

33-22-216. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 3, Ch. 699, L. 1991.

33-22-217 through 33-22-220 reserved.

33-22-221. Optional policy provisions — substitutes. Except as provided in 33-22-202(2), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in 33-22-222 through 33-22-231, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

History: En. Sec. 366, Ch. 286, L. 1959; R.C.M. 1947, 40-4016.

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification provisions — exemption for statutory requirements, 33-15-325.

33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

History: En. Sec. 367, Ch. 286, L. 1959; R.C.M. 1947, 40-4017.

33-22-223. Misstatement of age. There may be a provision as follows:

"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

History: En. Sec. 368, Ch. 286, L. 1959; R.C.M. 1947, 40-4018.

33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $.... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

(2) Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary, or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

History: En. Sec. 369, Ch. 286, L. 1959; R.C.M. 1947, 40-4019.

33-22-225. Insurance with other insurers — provision of service or expense incurred basis. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-226, there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: **En. Sec. 370, Ch. 286, L. 1959; R.C.M. 1947, 40-4020.**

Cross-References

Public assistance — reduction of benefits disallowed, 33-22-113.

33-22-226. Insurance with other insurers — other benefits. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-225, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other

state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 371, Ch. 286, L. 1959; R.C.M. 1947, 40-4021.

33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

History: En. Sec. 372, Ch. 286, L. 1959; R.C.M. 1947, 40-4022.

33-22-228. Unpaid premiums. There may be a provision as follows:

"Unpaid Premiums: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

History: En. Sec. 373; Ch. 286, L. 1959; R.C.M. 1947, 40-4023.

33-22-229. Conformity with state statutes. There must be a provision or the equivalent thereto as follows:

"Conformity with Montana statutes: The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 374, Ch. 286, L. 1959; R.C.M. 1947, 40-4024; amd. Sec. 10, Ch. 518, L. 1983; amd. Sec. 33, Ch. 798, L. 1991.

33-22-230. Illegal occupation. There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

History: En. Sec. 375, Ch. 286, L. 1959; R.C.M. 1947, 40-4025.

Cross-References

Felony — definition, 45-2-101.

33-22-231. Intoxicants and narcotics. There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

History: En. Sec. 376, Ch. 286, L. 1959; R.C.M. 1947, 40-4026.

Cross-References

Coverage for alcoholism and drug addiction, Title 33, ch. 22, part 7.

33-22-232. Renewal at option of insurer. Disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.

History: En. Sec. 377, Ch. 286, L. 1959; R.C.M. 1947, 40-4027; amd. Sec. 22, Ch. 303, L. 1981.

Part 3
Requirements for Certain Individual Coverages

33-22-301. Coverage of newborn under disability policy. (1) Each policy of disability insurance or certificate issued thereunder shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants must be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) No policy or certificate of insurance may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period.

History: (1), (2)En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974; Sec. 40-4002.1, R.C.M. 1947; (3)En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; Sec. 40-4002, R.C.M. 1947; R.C.M. 1947, 40-4002.1, 40-4002(4); (4)En. Sec. 23, Ch. 303, L. 1981; amd. Sec. 4, Ch. 139, L. 1987.

Cross-References

Child support enforced by Department of Social and Rehabilitation Services — insurance coverage required, 40-5-208.

33-22-302. Age limits — effect on coverage. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

History: En. Sec. 382, Ch. 286, L. 1959; R.C.M. 1947, 40-4032.

33-22-303. Coverage for well-child care. (1) Each policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 1, Ch. 199, L. 1991.

33-22-304. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738, 40-3740.

33-22-305. Individual family disability insurance continuity of coverage. Sections 33-22-305 through 33-22-311 may be cited as the "Individual Family Disability Insurance Continuity of Coverage Act".

History: En. Sec. 1, Ch. 245, L. 1981.

33-22-306. Purpose. The purpose of 33-22-305 through 33-22-311 is to provide for the right of covered family members under individual family disability insurance policies to continuity of coverage upon the death of the named insured, the divorce, annulment of marriage, or legal separation of the spouse from the named insured, or any other condition specifically stated in such disability insurance policies under which coverage would otherwise terminate as to the covered spouse or covered dependent children of the named insured.

History: En. Sec. 2, Ch. 245, L. 1981.

33-22-307. Continuity of coverage. (1) Subject to the requirements of 33-22-305 through 33-22-311 and on the date specified in the policy under which coverage otherwise terminates as to covered family members, other than for nonpayment of premium, nonrenewal of the policy, or the expiration of the term for which the policy is issued, a covered person (other than one eligible for medicare or any other similar federal or state disability insurance program), including the spouse and any covered dependent child of the last-named insured or the representative of such child, has the right to continuation of coverage under provisions that, at the option of the carrier, are consistent with:

(a) the continuation of the policy with the person exercising the right of continuation designated as the named insured;

(b) the issuance of a converted policy with the person exercising the conversion right designated as the named insured; or

(c) both (a) and (b).

(2) When continuation of coverage or conversion is made in the name of the spouse of the named insured, the coverage may, at the option of the spouse, include covered dependent children for whom the spouse has the responsibility for care and support.

History: En. Sec. 3, Ch. 245, L. 1981.

33-22-308. Form of coverage — requirements — evidence of insurability — preexisting conditions. (1) Coverage continued through the issuance of a converted policy shall consist of the form of coverage then being offered by the carrier as a conversion policy in the jurisdiction where the person exercising the conversion right resides that most nearly approximates the coverage of the policy from which conversion is exercised. Continued and converted coverages, other than those provided through the exercise of continuation or conversion rights contained in optionally renewable or limited right of renewal contracts, must contain:

(a) provisions allowing the person exercising the continuation or conversion the right to renew the coverage until the attainment of the age of eligibility for medicare or any other similar federal or state disability insurance program, subject to the right of the carrier to nonrenew all such policies in this state as a class; or

(b) other renewal provisions that are not less favorable to the insured than those contained in the policy from which conversion is exercised.

(2) Coverage provided through continuation or conversion may not require additional evidence of insurability except as to overinsurance and may not impose any preexisting condition limitations or other contractual time limitations other than those remaining unexpired under the policy or contract from which continuation or conversion is exercised.

History: En. Sec. 4, Ch. 245, L. 1981.

33-22-309. Notice. The eligible covered family member exercising the continuation or conversion right must notify the carrier and make payment of the applicable premium within 31 days following the date such coverage otherwise terminates as specified in the policy or contract from which continuation or conversion is being exercised.

History: En. Sec. 5, Ch. 245, L. 1981.

33-22-310. Nonduplication. Benefits otherwise payable under a converted policy may be reduced:

(1) so they are not, during the first policy year of the converted policy, in excess of those benefits that would have been payable had the coverage under the policy from which conversion is exercised not terminated; and

(2) by the amount of benefits, if any, payable as to the same loss under the policy from which conversion is exercised.

History: En. Sec. 6, Ch. 245, L. 1981.

33-22-311. Overinsurance. The carrier is not required to issue a converted policy if at the time of application the applicant:

(1) (a) has coverage under other disability insurance policies, health service corporation contracts, or self-insured health benefit plans providing similar benefits;

(b) is eligible for coverage under a group policy or contract providing similar benefits;

(c) is provided with similar benefits required by any statute; or

(d) is covered under any national, state, or governmental plan; and

(2) has coverage under subsection (1) that, together with the converted policy, would result in overinsurance according to the carrier's underwriting standards.

History: En. Sec. 7, Ch. 245, L. 1981.

Part 4

Franchise Disability Insurance

33-22-401. Franchise disability insurance. (1) Disability insurance on a franchise plan is hereby declared to be that form of disability insurance:

(a) issued to:

(i) 5 or more employees of any corporation, partnership, or individual employer or any governmental corporation, agency, or department thereof; or

(ii) 10 or more members, employees, or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;

(b) where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members or by some designated person acting on behalf of such employer, association, or union.

(2) The term "employees" as used herein may be deemed to include the officers, managers, and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

History: En. Sec. 383, Ch. 286, L. 1959; R.C.M. 1947, 40-4033.

Part 5

Group Disability Insurance

33-22-501. Group disability insurance defined — eligible groups. Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons and issued upon the following bases:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2) above, which trustees shall be deemed the

policyholder, to insure employees of the employers or members of the unions or of such association or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(intro.), (1) thru (5).

Cross-References

Hearings by Commissioner, 33-1-701.

Groups eligible for group life insurance, Title 33, ch. 20, part 11.

33-22-502. Required provisions of group policies. Each group disability insurance policy delivered or issued for delivery in this state must contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy;

(4) a provision or the equivalent thereto that reads:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4102(part); amd. Sec. 11, Ch. 798, L. 1991.

Cross-References

Representations not warranties — standard application construction, 33-15-403.

33-22-503. Continuation of benefits to dependents. Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(6).

33-22-504. Newborn infant coverage. (1) No group disability policy or certificate of insurance which, in addition to covering persons in the insured group, also covers members of such person's family may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons covered under the policy from and after the moment of birth.

(2) If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person covered under the policy.

(3) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. Secs. 385, 386, Ch. 286, L. 1959; amd. Secs. 3, 4, Ch. 74, L. 1973; amd. Secs. 3, 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(7), 40-4102(part); amd. Sec. 1, Ch. 384, L. 1987.

Cross-References

Child support enforced by Department of Social and Rehabilitation Services — insurance coverage required, 40-5-208.

33-22-505. Direct payment of hospital and medical services. Any group disability policy may on request by the group policyholder provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 387, Ch. 286, L. 1959; R.C.M. 1947, 40-4103.

33-22-506. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739, 40-3740.

33-22-507. Continuing group coverage after reduction of work schedule. A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged other members of the group of the same risk class.

History: En. Sec. 3, Ch. 579, L. 1981.

33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy issued or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy or as a result of his employer discontinuing his business or as a result of his employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and he is not insured under another major medical disability insurance policy or plan, he is entitled to have issued to him by the insurer, without evidence of insurability, group coverage or an individual policy issued by the insurer or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on himself, his dependents, or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy or group policy must be at the insurer's then customary rate applicable to the coverage of the individual or group policy.

History: En. Sec. 4, Ch. 579, L. 1981; amd. Sec. 2, Ch. 384, L. 1987; amd. Sec. 1, Ch. 200, L. 1991; amd. Sec. 9, Ch. 699, L. 1991.

Cross-References

State employee plan — conversion requirement, 2-18-704.

33-22-509. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract, including pregnancy of the insured or the insured's spouse or dependents covered by the group contract at the time of conversion.

History: En. Sec. 7, Ch. 579, L. 1981; amd. Sec. 3, Ch. 384, L. 1987.

33-22-510. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

History: En. Sec. 8, Ch. 579, L. 1981.

Cross-References

State employee plan — conversion requirement, 2-18-704.

33-22-511. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: En. Sec. 9, Ch. 579, L. 1981.

33-22-512. Coverage for well-child care. (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 2, Ch. 199, L. 1991.

33-22-513. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-22-508 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-22-508;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

History: En. Sec. 3, Ch. 200, L. 1991.

Part 6

Blanket Disability Insurance

33-22-601. Blanket disability insurance defined. Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subsections:

(1) under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons

of a class who may become passengers on such common carrier or such means of transportation;

(2) under a policy or contract issued to an employer, who shall be deemed the policyholder, covering all employees, dependents, or guests, defined by reference to specified hazards incident to the activities or operations of the employer or any class of employees, dependents, or guests similarly defined;

(3) under a policy or contract issued to a school or other institution of learning, camp or sponsor thereof; or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employees may be included.

(4) under a policy or contract issued in the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization;

(5) under a policy or contract issued to a sports team or sponsors thereof, which shall be deemed the policyholder, covering members, officials, and supervisors;

(6) under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, or agency having jurisdiction thereof, which shall be deemed the policyholder, covering all of the members of such fire department or group;

(7) under a policy or contract issued to cover any other risk or class of risks which in the discretion of the commissioner may be properly eligible for blanket disability insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

History: En. Sec. 388, Ch. 286, L. 1959; R.C.M. 1947, 40-4104.

Cross-References

Volunteer fire departments, Title 7, ch. 33, part 23.

33-22-602. Required provisions of blanket policies. Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with 33-1-501. Every such blanket policy shall contain provisions which in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following, a provision that:

(1) the policy and the application shall constitute the entire contract between the parties and that all statements made by the policyholder shall, in absence of fraud, be deemed representations and not warranties and that no such statements shall be used in defense to a claim under the policy, unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before

the expiration of 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof;

(6) the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(7) no action at law or in equity shall be brought to recover under the policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

History: En. Sec. 389, Ch. 286, L. 1959; R.C.M. 1947, 40-4105.

Cross-References

Standard application provision — warranties not representations, 33-15-403.

Redundant requirements of proof of loss for delay — unfair trade practice, 33-18-201.

Failure to promptly pay — unfair trade practice, 33-18-201.

Limitations on performing autopsies, 50-21-103.

33-22-603. Application and certificates not required. An individual application shall not be required from a person covered under a blanket disability policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

History: En. Sec. 390, Ch. 286, L. 1959; R.C.M. 1947, 40-4106.

33-22-604. Payment of claims — discharge. (1) All benefits under any blanket disability policy shall be payable to the person insured or to his designated beneficiary or beneficiaries or to his estate; except that if the person insured be a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or if the entire cost of the insurance has been borne by the employer such benefits may be made payable to the employer. Provided, however, that the policy may provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person.

(2) Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 391, Ch. 286, L. 1959; R.C.M. 1947, 40-4107.

Part 7

Coverage for Mental Illness, Alcoholism, and Drug Addiction

Part Cross-References

Mentally ill, Title 53, ch. 21.

Alcoholism and drug dependence, Title 53, ch. 24.

33-22-701. Scope of part — purpose. The provisions of this part apply to all group policies of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have such coverage according to his medical and economic needs.

History: En. Sec. 1, Ch. 197, L. 1979; amd. Sec. 1, Ch. 535, L. 1981; amd. Sec. 1, Ch. 593, L. 1983; amd. Sec. 4, Ch. 384, L. 1987.

Cross-References

Licensing of hospitals and related facilities, Title 50, ch. 5, part 2.

Alcoholism and drug dependence, Title 53, ch. 24.

Facility standards, 53-24-208.

33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility which:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and

(b) is licensed or approved as a treatment center by the department of corrections and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(5) "Outpatient benefits" are as set forth in 33-22-705.

History: En. Sec. 2, Ch. 197, L. 1979; amd. Sec. 2, Ch. 535, L. 1981; amd. Sec. 2, Ch. 593, L. 1983; amd. Sec. 2, Ch. 302, L. 1985; amd. Sec. 2, Ch. 98, L. 1987; amd. Sec. 2, Ch. 606, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Cross-References

Disclaimer provision allowable — disability insurance, 33-22-231.

Medicine — licensure, Title 37, ch. 3.

Licensure of psychologists, Title 37, ch. 17.

Licensure of social workers, Title 37, ch. 22.

33-22-703. Coverage for mental illness, alcoholism, and drug addiction. Insurers, health service corporations, or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans shall provide, for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction, subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d) as may be offered by the insurer or health service corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000;

(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits.

History: En. Sec. 3, Ch. 197, L. 1979; amd. Sec. 3, Ch. 535, L. 1981; amd. Sec. 3, Ch. 593, L. 1983; amd. Sec. 5, Ch. 139, L. 1987; amd. Sec. 5, Ch. 384, L. 1987.

33-22-704. Applicability. This part applies to policies, contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

History: En. Sec. 4, Ch. 197, L. 1979; amd. Sec. 4, Ch. 535, L. 1981; amd. Sec. 4, Ch. 593, L. 1983; amd. Sec. 6, Ch. 384, L. 1987.

33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of corrections and human services under 53-24-208.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of corrections and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of corrections and human services under 53-24-204.

History: En. Sec. 1, Ch. 98, L. 1987; amd. Sec. 12, Ch. 606, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Part 8
Extended Health Insurance

33-22-801. Purpose. It is the purpose of this part to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965; R.C.M. 1947, 40-5401.

33-22-802. Definitions. Wherever used in this part, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(1) "Association" means a voluntary unincorporated association formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this part in this or any other state having legislation enabling the issuance of insurance of the type provided in this part.

(2) "Extended health insurance" means hospital, surgical, and medical expense insurance provided by a policy issued as provided by this part.

(3) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

History: En. Sec. 2, Ch. 61, L. 1965; R.C.M. 1947, 40-5402.

33-22-803. Joint underwriting association for group disability insurance authorized. (1) Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued, and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing, and administering such insurance. The policyholder may be an association, a trustee, or any other person.

(2) A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this part shall be another form of group disability insurance.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-804. Corporate powers of association — examination of books. (1) Any association formed for the purposes of this part may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of the association. An association may sue and be sued in its associate name and for that purpose only must be treated as a domestic corporation. Service of process against the association made upon a managing insurance producer, any member of the association, or any insurance producer authorized by appointment to receive service of process has the same force and effect as if service had been made upon all members of the association.

(2) The association's books and records must also be subject to examination under the provisions of 33-1-315, 33-1-316, 33-1-401, 33-1-402, 33-1-409, 33-1-411, and 33-1-413, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965; R.C.M. 1947, 40-5405; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 68, Ch. 596, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 596 in (2), in list of statutory references, substituted "33-1-401, 33-1-402, 33-1-409, 33-1-411, and 33-1-413" for "33-1-401 through 33-1-413"; and made minor changes in style.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service on insurance companies — Commissioner as attorney, 33-1-601.

33-22-805. Documents to be filed with commissioner by association. The articles of association of any association formed in accordance with this part, all amendments and supplements thereto, a designation in writing of a resident of this state as insurance producer for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Agent for service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-22-806. Limited exemption from prosecution. No act done, action taken, or agreement made pursuant to the authority conferred by this part shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965; R.C.M. 1947, 40-5408.

Cross-References

Unlawful restraint of trade — no mention of insurance, 30-14-205.

33-22-807 through 33-22-810 reserved.

33-22-811. Policy provisions concerning additional coverage. Any policy developed pursuant to 33-22-803 may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical, or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100% of covered expenses which he is required to pay. Any insurer issuing individual policies providing extended hospital, surgical, or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-812. Policy forms to be approved — procedure — disapproval. (1) The forms of the policies, applications, certificates or other evidence of insurance coverage, and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner.

(2) The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading, or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided.

(3) In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state, including any differing operating methods of the insurers joining in the issue of the policy.

(4) In exercising the powers conferred upon him by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

(5) The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part); amd. Sec. 24, Ch. 303, L. 1981.

Cross-References

Approval of policy forms by Commissioner, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

33-22-813. Sale area — insurance producers. (1) Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancelable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

(2) A person licensed to transact disability insurance as an insurance producer may transact extended health insurance and may be paid a commission thereon.

History: En. Secs. 3, 4, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part), 40-5404; amd. Sec. 13, Ch. 345, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licensing of insurance producers, Title 33, ch. 17.

33-22-814. Deceptive practices prohibited. The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued pursuant to this part shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).

Cross-References

False or deceptive advertising — unfair trade practice, 33-18-203.

33-22-815. Report. The association shall submit an annual report to the commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this part, and the calendar year experience applicable to such insurance offered under this part, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

Cross-References

Annual report of insurers, 33-2-701.

33-22-816. Adjustments for federal benefits. If and when a program of hospital, surgical, and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this part shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

Cross-References

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

Part 9

Medicare Supplement Insurance Minimum Standards

33-22-901. Short title. This part may be cited as the "Medicare Supplement Insurance Minimum Standards Act".

History: En. Sec. 1, Ch. 298, L. 1981.

33-22-902. Purpose. The purpose of this part is to establish minimum standards for medicare supplement policies and certificates and to establish a regulatory program that meets the requirements of 42 U.S.C. 1395ss(p)(1)(A).

History: En. Sec. 2, Ch. 298, L. 1981; amd. Sec. 1, Ch. 163, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 163 near middle, after "supplement", deleted "insurance", after "policies" inserted "and certificates", and at end substituted "42 U.S.C. 1395ss(p)(1)(A)" for "Public Law 96-265, the Social Security Disability Amendments of 1980, approved June 9, 1980". Amendment effective March 24, 1993.

33-22-903. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means a certificate delivered or issued for delivery in this state under a group medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Entity" means an insurer as defined in 33-1-201, a health service corporation as defined in 33-30-101, and a health maintenance organization as defined in 33-31-102.

(5) "Health care expenses":

(a) means expenses of a health maintenance organization associated with the delivery of health care services that are analogous to incurred losses of an insurer;

(b) does not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any entity delivering or issuing for delivery in this state medicare supplement policies or certificates.

(7) "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(8) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation, other than a policy issued pursuant to a contract under 42 U.S.C. 1395l or 1395mm, or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers, organizations, and trustees, for employees or former employees, or a combination of current and former employees, or for members or former members, or a combination of current and former members, of the labor organizations; or

(b) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

History: En. Sec. 3, Ch. 298, L. 1981; amd. Sec. 2, Ch. 682, L. 1989; amd. Sec. 2, Ch. 163, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 163 in definition of applicant, in two places, and in definition of certificate, after "policy", deleted "or subscriber contract"; inserted definitions of certificate form, issuer, and policy form; in definition of Medicare supplement policy, near middle of first sentence after "corporation", inserted "other than a policy issued pursuant to a contract under 42 U.S.C. 13951 or 1395mm, or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act", at end of sentence deleted "by reason of age", and deleted former (b) that read: "(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members"; and made minor changes in style. Amendment effective March 24, 1993.

33-22-904. Standards for policy provisions — rules. (1) A medicare supplement policy or certificate in force in this state may not contain benefits that duplicate benefits provided by medicare.

(2) The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies and certificates. A requirement of this code relating to minimum required policy benefits, other than the minimum standards contained in this part, may not apply to medicare supplement policies and certificates. The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage;

(d) probationary periods;

(e) benefit limitations, exceptions, and reductions;

(f) elimination periods;

(g) requirements for replacement;

(h) recurrent conditions; and

(i) definitions of terms.

(3) The commissioner may adopt reasonable rules that prohibit policy or certificate provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy or certificate.

(4) Notwithstanding any other provisions of the law, a medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(5) The commissioner may adopt rules necessary to conform medicare supplement policies and certificates to the requirements of federal law and federal regulations, including but not limited to rules:

(a) requiring refunds or credits if the policies or certificates do not meet loss requirements;

(b) establishing a uniform methodology for calculating and reporting loss ratios;

(c) ensuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;

(d) establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and

(e) establishing a policy for holding public hearings prior to approval of premium increases.

History: En. Sec. 4, Ch. 298, L. 1981; amd. Sec. 3, Ch. 682, L. 1989; amd. Sec. 3, Ch. 163, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 163 in (1), after "supplement", deleted "insurance" and after "policy" deleted "contract"; in (2) inserted second sentence precluding applicability to Medicare supplement policies and certificates; in (3), in two places after "policy", inserted "or certificate"; in (4), in two places after "policy", inserted "or certificate" and in first sentence substituted "exclude or limit benefits" for "deny a claim"; inserted (5) granting the Commissioner rulemaking authority to conform policies and certificates to federal law; and made minor changes in style. Amendment effective March 24, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-905. Minimum standards for benefits and payment of claims — rules. The commissioner shall adopt reasonable rules to establish minimum standards for benefits, payment of claims, marketing practices, compensation arrangements, and reporting practices for medicare supplement policies and certificates.

History: En. Sec. 5, Ch. 298, L. 1981; amd. Sec. 4, Ch. 682, L. 1989; amd. Sec. 4, Ch. 163, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 163 near middle, after "claims", inserted "marketing practices, compensation arrangements, and reporting practices" and at end inserted "and certificates"; and made minor changes in style. Amendment effective March 24, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-906. Loss ratio standards and filing requirements — limits on compensation. (1) Medicare supplement policies and certificates must return to policyholders or certificate holders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies and certificates on the basis of incurred claims experience or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as group policies. Every entity providing medicare supplement insurance benefits to a resident of this state shall make premium adjustments:

(a) necessary to produce an expected loss ratio under the policy or certificate that meets the minimum loss ratio standards for medicare supplement policies and certificates as established by rule; and

(b) expected to result in a loss ratio at least as great as that originally anticipated by the entity when it established current premiums for the medicare supplement policy or certificate.

(2) The commissioner shall by rule establish the timing and manner of the premium adjustments. Every entity providing medicare supplement policies or certificates in this state shall annually file with the commissioner its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this part. An entity transacting medicare supplement insurance in this state may not adjust its rates more than twice a year and may not adjust its rates for the first year a policy is in force, except to allow for changes in federal laws or regulations relating to medicare. Each filing of rates and rating schedules must demonstrate that the actual and expected losses in relation to premiums complies with the requirements of this part.

(3) An entity may not provide compensation to its insurance producers that is greater than the renewal compensation that would be paid on an existing policy or certificate if:

(a) the existing policy or certificate were replaced by another policy or certificate with the same insurer and the new benefits are substantially similar to the benefits under the old policy or certificate; and

(b) the old policy or certificate was issued by the same insurer or insurance group.

History: En. Sec. 6, Ch. 298, L. 1981; amd. Sec. 5, Ch. 682, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 163, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 163 deleted former (1) that read: "(1) Every entity providing group medicare supplement insurance benefits to a resident of this state shall file a copy of the master policy and each certificate used in this state with the commissioner as required by 33-1-501. The filing must be made not less than 60 days in advance of the delivery of any certificate or policy to a resident of this state"; in (1), in three places after "policies", inserted "and certificates", in first sentence, after "policyholders", inserted "or certificate holders", and at end of third sentence, before "policies", substituted "group" for "individual"; in (1)(a), after "policy or", substituted "certificate" for "contract" and after "policies" inserted "and certificates"; in (1)(b), after "supplement", deleted "insurance" and at end substituted "certificate" for "contract"; in (3), in introductory clause, in (3)(a), in three places, and in (3)(b), after "policy", inserted "or certificate"; and made minor changes in style. Amendment effective March 24, 1993.

33-22-907. Disclosure standards — informational brochure — rules. (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies and certificates, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501. The filing must be made at least 60 days in advance of the date the outline of coverage is delivered to any resident of this state.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy or certificate;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy or certificate;

(iii) a statement of the renewal provisions including any reservation by the issuer of a right to change premiums and disclosure of the existence of any automatic renewal premium increases based on the policyholder's or certificate holder's age;

(iv) a statement that the outline of coverage is a summary of the policy or certificate issued or applied for and that the policy or certificate should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare, other than:

(a) medicare supplement policies or certificates;

(b) disability income policies;

(c) basic, catastrophic, or major medical expense policies;

(d) single premium, nonrenewable policies; or

(e) other policies excepted in 33-22-903(8).

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies or certificates by persons eligible for medicare.

(6) As soon as practicable, but no later than 30 days before the annual effective date of a medicare benefit change, every entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders and certificate holders, in a format that the commissioner prescribes by rule, of the changes it has made to the medicare supplement policy or certificate.

History: **En. Sec. 7, Ch. 298, L. 1981; amd. Sec. 6, Ch. 682, L. 1989; amd. Sec. 6, Ch. 163, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 163 in (1), in first sentence after "policies", inserted "and certificates"; in (2)(c)(i) and (2)(c)(ii), after "policy", inserted "or certificate"; in (2)(c)(iii), near middle, substituted "issuer" for "insurer" and after "change premiums" inserted "and disclosure of the existence of any automatic renewal premium increases based on the policyholder's or certificate holder's age"; in (2)(c)(iv), in two places after "policy", inserted "or certificate"; in (3), in two places, and in (4), in introductory clause after "medicare", deleted "by reason of age"; in (4)(a), after "policies", inserted "or certificates"; in (4)(e) substituted "33-22-903(8)" for "33-22-903(6)"; in (5), near end after "policies", deleted "subscriber contracts" and after "medicare" deleted "by reason of age"; in (6), near middle after "policyholders", deleted "contract holders", near end, after "supplement", deleted "insurance", and at end substituted "certificate" for "contract". Amendment effective March 24, 1993.

33-22-908. Notice of free examination. Medicare supplement policies and certificates must have a notice prominently printed on the first page of the policy or certificate or attached to the policy or certificate stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. The issuer shall pay any refund made pursuant to this section directly to the applicant in a timely manner.

History: **En. Sec. 8, Ch. 298, L. 1981; amd. Sec. 7, Ch. 682, L. 1989; amd. Sec. 7, Ch. 163, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 163 at beginning of second sentence substituted "issuer" for "insurer"; and made minor changes in style. Amendment effective March 24, 1993.

33-22-909. Administrative procedures. Rules adopted pursuant to this part are subject to the provisions of 33-1-313 and Title 2, chapter 4.

History: **En. Sec. 9, Ch. 298, L. 1981.**

33-22-910. Filing requirements for advertising. Every issuer of medicare supplement policies or certificates in this state shall provide to the commissioner for the commissioner's review or approval a copy of any medicare supplement advertising intended for use in this state, whether through written, radio, or television medium.

History: **En. Sec. 8, Ch. 682, L. 1989; amd. Sec. 8, Ch. 163, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 163 at beginning substituted "issuer of" for "entity providing", near middle, after "supplement", substituted "policies or certificates" for "insurance or benefits", and after "review" inserted "or approval"; and made minor changes in style. Amendment effective March 24, 1993.

33-22-911. Penalties. In addition to any other penalties for violations of the insurance code, the commissioner may after hearing require issuers violating any provision of or rule adopted under Title 33, chapter 16, or this part to cease marketing a medicare supplement policy or certificate in this state that is related directly or indirectly to the violation or take action that is necessary to comply with the provisions of Title 33, chapter 16, or this part or the rules adopted under Title 33, chapter 16, or this part, or both.

History: **En. Sec. 9, Ch. 682, L. 1989; amd. Sec. 9, Ch. 163, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 163 near beginning, after "require", substituted "issuers" for "entities"; and made minor changes in style. Amendment effective March 24, 1993.

33-22-912 through 33-22-920 reserved.

33-22-921. Discontinuance or nonrenewal — alternate policy or certificate — same insurer. (1) If a disability insurer discontinues or does not renew a medicare supplement policy product or certificate and offers an alternate medicare supplement policy or certificate to its insureds within this state, it may not deny benefits under the replacing policy or certificate to an insured who receives treatment for a condition that was a covered expense under the replaced policy or certificate and is a covered expense under the replacing policy or certificate if the insured enrolls in and pays the premium for the replacing policy or certificate within 31 days after the termination of the replaced policy or certificate.

(2) A disability insurer who discontinues or does not renew a medicare supplement policy product or certificate and offers an alternate medicare supplement policy or certificate shall base its premium for the alternate policy or certificate on the rates currently in place for that policy or certificate.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy or certificate, any period of time that was covered by that policy or certificate must be credited toward the preexisting condition limitation period of the replacing policy or certificate.

History: En. Sec. 1, Ch. 125, L. 1987; amd. Sec. 12, Ch. 798, L. 1991.

33-22-922. Discontinuance or nonrenewal — alternate policy — unauthorized bulk reinsurance. (1) Alternate medicare supplement coverage as provided in 33-22-921 must be offered to its insureds by a disability insurer that:

(a) bulk cedes its medicare supplement policy business to an insurer that does not meet the requirements of chapter 2;

(b) authorizes the bulk reinsurer to administer the medicare supplement policies on its behalf; and

(c) discontinues or does not renew a medicare supplement policy product.

(2) The premium for the alternate policy referred to in subsection (1) must be based on actuarially justified rates.

History: En. Sec. 2, Ch. 125, L. 1987.

33-22-923. Replacement policy or certificate — different insurer. (1) If a disability insurer replaces a medicare supplement policy or certificate, it may not deny benefits under the replacing policy or certificate to an insured who receives treatment for a condition that was a covered expense under the replaced policy or certificate and is a covered expense under the replacing policy or certificate if the insured pays the premium for the replacing policy or certificate when due or within 31 days after the termination of the replaced policy or certificate.

(2) An insurer who replaces a medicare supplement policy or certificate shall base its premium for the replacement policy or certificate on the rates currently in place for that policy or certificate.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy or certificate, any period of time that was covered by that policy or certificate must be credited toward the preexisting condition limitation period of the replacing policy or certificate.

(4) To receive the benefits of subsections (1) through (3), a person shall submit to the replacing insurer proof of prior coverage, evidence of benefits provided under the previous policy or certificate, and the effective date and the date of termination of coverage under the previous policy or certificate.

History: **En. Sec. 3, Ch. 125, L. 1987; amd. Sec. 13, Ch. 798, L. 1991.**

33-22-924. Renewal requirement. (1) If a person pays a renewal premium on the date it is due or within 31 days after it is due, an insurer may not refuse to renew a medicare supplement policy or certificate unless the insurer:

(a) refuses to renew all policies or certificates in this state that are of the same form and issued to persons of the same class; and

(b) offers a replacement policy or certificate at actuarially justified rates.

(2) If an insurer refuses to renew all policies or certificates in this state that are of the same form and issued to persons of the same class, the policies or certificates will remain in force during the grace period stated in the replaced policy or certificate. An insurer's refusal to renew a policy or certificate may not affect a claim that arose under the discontinued policy or certificate during the period in which an insured was confined without interruption to a medical care facility for treatment.

History: **En. Sec. 4, Ch. 125, L. 1987; amd. Sec. 14, Ch. 798, L. 1991.**

Part 10

Home Health Care Coverage

33-22-1001. Definition of home health care. "Home health care" means services provided by a licensed home health agency to an insured in his place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

(1) nursing;

(2) home health aide services;

(3) physical therapy;

(4) occupational therapy;

(5) speech therapy;

(6) hospice service;

(7) medical supplies and equipment suitable for use in the home; and

(8) medically necessary personal hygiene, grooming, and dietary assistance.

History: **En. Sec. 1, Ch. 508, L. 1981.**

Cross-References

Hospitals and related facilities — general provisions, Title 50, ch. 5, part 1.

33-22-1002. Availability of coverage for home health care. Insurers and health services corporations transacting health insurance business in this state must make available, under group insurance policies and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy or contract may select any level of benefits as may be offered by the insurer or service plan corporation.

History: En. Sec. 2, Ch. 508, L. 1981.

33-22-1003. Applicability. This part applies to policies or contracts delivered or issued for delivery in this state after January 29, 1981, but does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, or to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under federal governmental plans.

History: En. Sec. 3, Ch. 508, L. 1981.

Part 11

Long-Term Care Insurance Act

33-22-1101. Short title. This part may be cited as the "Long-Term Care Insurance Act".

History: En. Sec. 1, Ch. 355, L. 1989.

33-22-1102. Purpose. The purpose of this part is to:

(1) promote the public interest;

(2) promote the availability of long-term care insurance;

(3) protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;

(4) establish standards for long-term care insurance;

(5) facilitate public understanding and comparison of long-term care insurance policies; and

(6) facilitate flexibility and innovation in the development of long-term care insurance coverage.

History: En. Sec. 2, Ch. 355, L. 1989.

33-22-1103. Compliance required. A policy may not be advertised, marketed, or offered in this state as long-term care insurance or nursing home insurance unless it complies with this part.

History: En. Sec. 13, Ch. 355, L. 1989.

33-22-1104 through 33-22-1106 reserved.

33-22-1107. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means a document issued to a member of the group covered under a group insurance policy that has been delivered or issued for delivery in this state as evidence that the individual named in the certificate is covered under the policy.

(3) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) an employer;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by an employer or labor organization or a combination thereof for:

(A) employees or former employees or a combination thereof; or

(B) members or former members of the labor organization or a combination thereof;

(b) a professional, trade, or occupational association for its current, former, or retired members or combination thereof, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collect dues or solicit contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (3)(a) through (3)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(4) (a) "Long-term care insurance":

(i) means a policy as defined in subsection (5) that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service provided in a setting other than an acute care unit of a hospital;

(ii) includes group and individual insurance policies or riders, whether issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization;

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance; and

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section.

(b) Long-term care insurance does not include an insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(c) Long-term care insurance does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(d) An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(5) "Policy" means a policy as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(6) "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

History: En. Sec. 3, Ch. 355, L. 1989; amd. Sec. 2, Ch. 152, L. 1991.

Cross-References

Policy defined, 33-15-102.

Membership contract defined, 33-30-101.

Health care services agreement defined, 33-31-102.

33-22-1108. Preexisting condition — definition. (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group as defined in 33-22-1107(3)(a) may not use a definition of preexisting condition which is more restrictive than the definition in 33-22-1107.

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

(4) An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2).

History: En. Sec. 7, Ch. 355, L. 1989.

33-22-1109 and 33-22-1110 reserved.

33-22-1111. Outline of coverage. (1) An insurer shall deliver an outline of coverage to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(a) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(b) In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant's request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is a summary only of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and premium refunded; and

(f) a brief description of the relationship of cost of care and benefits.

History: **En. Sec. 11, Ch. 355, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.**

33-22-1112. Required content for certificate. A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this state must include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) a statement that the group master policy determines governing contractual provisions.

History: **En. Sec. 12, Ch. 355, L. 1989.**

33-22-1113. Disclosure and performance standards for long-term care insurance. (1) The commissioner may by rule adopt standards for full and fair disclosure, setting forth the manner, content, and disclosures required to be made in a long-term care insurance policy, including but not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage provisions;

(d) coverage of dependents;

(e) preexisting conditions;

(f) termination of insurance;

(g) continuation or conversion;

(h) probationary periods;

(i) limitations;

(j) exceptions;

(k) reductions;

(l) elimination periods;

(m) requirements for replacement;

(n) recurrent conditions; and

(o) definition of terms.

(2) A group long-term care insurance policy must include a provision relating to conversion on termination of eligibility as described in 33-22-508 or include a provision for continuation of coverage that maintains coverage under the existing group policy if the coverage would otherwise terminate.

History: **En. Sec. 5, Ch. 355, L. 1989.**

Cross-References

Conversion on termination of eligibility, 33-22-508.

33-22-1114. Prohibited practices and policy provisions. A long-term care insurance policy may not:

(1) be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of an insured or a certificate holder;

(2) contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) provide coverage for only skilled nursing care or provide substantially more coverage for skilled nursing care in a facility than coverage for lower levels of care.

History: En. Sec. 6, Ch. 355, L. 1989.

33-22-1115. Prior hospitalization or institutionalization. (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement; or

(b) provided in an institutional care setting on the receipt of a higher level of institutional care.

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including the required number of days of confinement.

(3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which benefits are paid.

(5) A long-term care insurance policy that provides a benefit only following institutionalization may not condition the benefit upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution.

History: En. Sec. 8, Ch. 355, L. 1989.

33-22-1116 through 33-22-1118 reserved.

33-22-1119. Right to return policy — free look. (1) A person insured under an individual long-term care insurance policy has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual long-term care insurance policy must have a notice prominently printed on the first page of the policy or attached to it stating that the insured has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care insurance policy or certificate issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the insured has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

History: En. Sec. 10, Ch. 355, L. 1989.

33-22-1120. Extraterritorial jurisdiction. A group long-term care insurance policy or certificate may not be delivered or issued for delivery to a resident of Montana under a group policy issued in another state to a group described in 33-22-1107(3)(d) unless it is approved by:

(1) the commissioner; or

(2) the insurance regulatory official of a state that has statutory and regulatory long-term care insurance requirements substantially similar to those adopted in Montana.

History: En. Sec. 4, Ch. 355, L. 1989.

33-22-1121. Rules — loss ratio standards. (1) The commissioner may adopt rules necessary to implement this part.

(2) The commissioner may by rule establish loss ratio standards for long-term care insurance policies.

History: (1)En. Sec. 14, Ch. 355, L. 1989; (2)En. Sec. 9, Ch. 355, L. 1989.

Cross-References

General rulemaking authority of Commissioner, 33-1-313.

Notice of hearing, 33-1-703.

Part 12

Limited Benefit Disability Insurance

33-22-1201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Health service corporation" has the same meaning as provided in 33-30-101.

(2) "Insurer" means an insurer operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(3) "Limited benefit disability insurance policy" means a policy or contract of insurance meeting the requirements of 33-22-1202 through 33-22-1204.

History: En. Sec. 1, Ch. 606, L. 1991.

33-22-1202. Limited benefit disability insurance policies authorized. (1) Insurers and health service corporations may issue limited benefit disability insurance policies that do not provide mandated health care coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304, 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004, 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the provision specifically mandates coverage for policies issued under this part.

(2) Limited benefit disability insurance policies may be issued only to the following persons:

(a) employers who:

(i) employ 20 or fewer employees working at least 20 hours per week; and

(ii) have been in business in the state for at least 12 months and have not contributed, within the preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

(b) disabled or injured workers and their families;

(c) unemployed individuals and their families;

(d) self-employed individuals and their families; and

(e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is ordered by a court or administrative authority of this or another state or who is required under 40-5-208(1)(b) to provide health insurance coverage for a child if health insurance coverage is not available through employment or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a court or administrative authority.

(3) The insurer or health service corporation may establish terms and conditions for copayments and deductibles.

(4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate, or evidence of coverage, stating in clear and understandable language and format which mandatory coverages and providers are not covered by the policy and what coverage is provided by the policy.

(5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum requirements set forth in 33-22-1203.

History: En. Sec. 2, Ch. 606, L. 1991.

33-22-1203. Limited benefit disability insurance — minimum benefits. A limited benefit disability insurance policy must provide benefits that include but are not limited to coverage for:

(1) maternity care consisting of prenatal and obstetrical care furnished by providers licensed or certified in accordance with the laws of the state of Montana or the state where the services are provided;

(2) newborn care consisting of routine hospital nursery and pediatric care for the child of a covered individual or covered individual's spouse from the instant of birth until the child reaches the age of 31 days. If newborn coverage is to continue beyond 31 days and payment of a specific premium or subscription fee is required to provide coverage for a child, the policy may require that notification of the birth of the child and payment of the required premium must be furnished to the insurer within 31 days after the date of birth in order to have the coverage continue beyond the 31-day period.

(3) well-child care consisting of immunizations and checkups for children under 2 years of age;

(4) services for the care and treatment of mental illness, alcoholism, and substance abuse, consisting of inpatient or outpatient services by any licensed Montana facility or provider, with a minimum annual benefit of $1,000; and

(5) hospital care under terms and conditions established by the policy of insurance.

History: En. Sec. 3, Ch. 606, L. 1991.

33-22-1204. Certification of limited benefit disability insurance policies. Before an insurer or health service corporation may market or issue a limited benefit disability insurance policy, the commissioner of insurance shall certify that the policy provides the minimum benefits required in 33-22-1203.

History: En. Sec. 4, Ch. 606, L. 1991.

33-22-1205. Premium tax. The premium tax provided in 33-2-705(2) does not apply to premiums paid on account of policies issued under 33-22-1202 and 33-22-1203.

History: En. Sec. 5, Ch. 606, L. 1991.

Parts 13 and 14 reserved

Part 15

Comprehensive Health Association and Plan

33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan; and

(b) unless the individual's eligibility is waived by the association, has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(5) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(6) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(7) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(8) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(9) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

(10) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

History: En. Sec. 1, Ch. 595, L. 1985; amd. Sec. 15, Ch. 798, L. 1991.

33-22-1502. Duties of the commissioner — rules. The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to assure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part.

History: En. Sec. 2, Ch. 595, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-1503. Comprehensive health association — mandatory membership. (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

(d) establish administrative and accounting procedures for the operation of the association;

(e) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association; and

(f) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(e).

History: En. Sec. 3, Ch. 595, L. 1985.

33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the seven participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner; and

(b) a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them due to their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

History: **En. Sec. 4, Ch. 595, L. 1985; amd. Sec. 16, Ch. 798, L. 1991.**

33-22-1505. Liability of association membership. No member of the association is liable for the actions of the association or its lead carrier.

History: **En. Sec. 13, Ch. 595, L. 1985.**

33-22-1506 through 33-22-1510 reserved.

33-22-1511. Minimum benefits of association plan. The association through the association plan shall offer a policy that provides at least the benefits required by 33-22-1521.

History: **En. Sec. 5, Ch. 595, L. 1985; amd. Sec. 26, Ch. 798, L. 1991.**

33-22-1512. Association plan premium. The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of premiums may not be less than 150% or more than 400% of the average premium rates charged by the five insurers with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually by all insurers at the request of the commissioner. The association shall utilize generally acceptable actuarial principles and structurally compatible rates.

History: **En. Sec. 8, Ch. 595, L. 1985; amd. Sec. 27, Ch. 798, L. 1991.**

33-22-1513. Operation of association plan. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association

plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance premium received by all association members from or on behalf of Montana residents as determined by the commissioner.

(b) For purposes of this subsection (4), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, or life insurance.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium.

History: En. Sec. 9, Ch. 595, L. 1985; amd. Sec. 31, Ch. 112, L. 1991; amd. Sec. 17, Ch. 798, L. 1991; amd. Sec. 29, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 in (6), after "shall", substituted "report to the office of budget and program planning, as a part of the information required by 17-7-111" for "as provided in 5-11-210, report to the legislature".

33-22-1514. Administration of association plan — rules. (1) The association shall select one lead carrier to issue the association plan. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

(5) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

(6) The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for its actions, subject to the laws of this state.

History: En. Sec. 10, Ch. 595, L. 1985; amd. Sec. 28, Ch. 798, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner which facilitates public participation in the association plan.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan. The lead carrier shall pay an insurance producer's referral fee of $25 to each licensed disability insurance producer who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid by the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance must notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it.

History: En. Sec. 11, Ch. 595, L. 1985; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 29, Ch. 798, L. 1991.

33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that he fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. This subsection does not apply to a person who has had continuous coverage under an individual, family, or group policy during the year immediately preceding the filing of an application and whose cancellation date was within 30 days prior to the date of submission of a certificate of eligibility to the lead carrier for nonelective procedures.

(5) A change of residence from Montana to another state immediately terminates eligibility for renewal of coverage under the association plan.

History: En. Sec. 12, Ch. 595, L. 1985; amd. Sec. 30, Ch. 798, L. 1991.

33-22-1517 through 33-22-1520 reserved.

33-22-1521. Association plan — minimum benefits. A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 80% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but such maximums may not be less than $100,000.

(2) Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician or other licensed health care professional provided for in 33-22-111:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of medical equipment, which shall be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental; and

(l) services of a licensed home health agency, up to a maximum of 180 visits per year.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) drugs requiring a physician's prescription;

(ii) services of a nursing home;

(iii) home and office calls, except as specifically provided in subsection (2);

(iv) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(v) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(vi) oral surgery, except as specifically provided in subsection (2);

(vii) that part of a charge for services or articles which exceeds the prevailing charge in the locality where the service is provided; or

(viii) care that is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition;

(iv) confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) organ transplants, including bone marrow transplants;

(vii) room and board for a nonemergency admission on Friday or Saturday;

(viii) pregnancy, except complications of pregnancy;

(ix) routine well baby care;

(x) complications to a newborn, unless no other source of coverage is available;

(xi) sterilization or reversal of sterilization;

(xii) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xiii) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xiv) artificial insemination or treatment for infertility; or

(xv) breast augmentation or reduction.

History: En. Sec. 6, Ch. 595, L. 1985; amd. Sec. 31, Ch. 798, L. 1991.

33-22-1522. Repealed. Sec. 34, Ch. 798, L. 1991.

History: En. Sec. 7, Ch. 595, L. 1985.

Part 16

Subrogation — Notice

Part Cross-References

State employee group insurance — subrogation — notice, Title 2, ch. 18, part 9.

Health service corporations — subrogation — notice, Title 33, ch. 30, part 11.

33-22-1601. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to subrogation, as provided for in 33-22-1602, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

History: En. Sec. 1, Ch. 365, L. 1987.

33-22-1602. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by 33-22-1601.

(4) The insurer's right of subrogation granted in 33-22-1601 may not be enforced until the injured insured has been fully compensated for his injuries.

History: En. Sec. 3, Ch. 365, L. 1987.

Part 17

Preferred Provider Agreements

33-22-1701. Short title. This part may be cited as the "Preferred Provider Agreements Act".

History: En. Sec. 1, Ch. 638, L. 1987.

33-22-1702. Purpose. The purpose of this part is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers to:

(1) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or

(2) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan.

History: En. Sec. 2, Ch. 638, L. 1987.

33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) the subscriber's or insured's health would be in serious jeopardy;

(b) the subscriber's or insured's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as described in 33-7-105; or

(e) any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage.

History: En. Sec. 3, Ch. 638, L. 1987; amd. Sec. 67, Ch. 713, L. 1989; amd. Sec. 40, Ch. 586, L. 1991; amd. Sec. 32, Ch. 451, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 451 in definition of health care insurer deleted former (e) that read: "an administrator as defined in 33-17-102"; and made minor changes in style.

33-22-1704. Preferred provider agreements authorized. (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

(3) A preferred provider agreement entered into or renewed after March 26, 1993, must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider

agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals.

History: En. Sec. 4, Ch. 638, L. 1987; amd. Sec. 1, Ch. 714, L. 1991; amd. Sec. 1, Ch. 202, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 202 in (3) deleted former first sentence that read: "This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers"; inserted (3) regarding the opportunity to submit bids or offers for preferred provider agreements; inserted (4) regarding bid or offer not being received; and inserted (5) regarding rejection of bids or offers and restricting preferred provider agreements. Amendment effective March 26, 1993.

33-22-1705. Incentives in health benefit plans. (1) A health care insurer may issue a policy or a health benefit plan that provides for incentives for covered persons to use the health care services of preferred providers. The policy or health benefit plan must contain at least:

(a) a provision that if a covered person receives emergency care for services specified in the preferred provider agreement and cannot reasonably reach a preferred provider, the care rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider; and

(b) a provision that clearly identifies the difference in benefit levels for health care services of a preferred provider and benefit levels for the same health care services of a nonpreferred provider.

(2) A health care insurer may not require hospital staff privileges as criteria for designation as a preferred provider in a preferred provider agreement.

History: En. Sec. 5, Ch. 638, L. 1987.

33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies, and subscriber contracts. (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain certain other components designed to control the cost and improve the quality of health care for insureds and subscribers, including:

(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider.

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.

(3) A plan offering prepaid dental services under this part must offer its insureds the right to obtain dental care from any licensed dental care provider of their choice, subject to the same terms and conditions imposed under subsection (1).

History: En. Sec. 6, Ch. 638, L. 1987; amd. Sec. 1, Ch. 265, L. 1989.

Cross-References

Disability insurance — freedom of choice of practitioners, 33-22-111.

Dentist participation as provider through health maintenance organization, 33-31-305.

33-22-1707. Rules. The commissioner shall promulgate rules necessary to implement the provisions of this part.

History: En. Sec. 7, Ch. 638, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 18

Small Employer Health Insurance Availability Act

33-22-1801. *(Effective January 1, 1994)* **Short title.** This part may be cited as the "Small Employer Health Insurance Availability Act".

History: En. Sec. 22, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1802. *(Effective January 1, 1994)* **Purpose.** (1) This part must be interpreted and construed to effectuate the following express legislative purposes:

(a) to promote the availability of health insurance coverage to small employers regardless of health status or claims experience;

(b) to prevent abusive rating practices;

(c) to require disclosure of rating practices to purchasers;

(d) to establish rules regarding renewability of coverage;

(e) to establish limitations on the use of preexisting condition exclusions;

(f) to provide for the development of basic and standard health benefit plans to be offered to all small employers;

(g) to provide for the establishment of a reinsurance program; and

(h) to improve the overall fairness and efficiency of the small employer health insurance market.

(2) This part is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

History: En. Sec. 23, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1803. *(Effective January 1, 1994)* **Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to 33-22-1812.

(6) "Board" means the board of directors of the program established pursuant to 33-22-1818.

(7) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, a health maintenance organization, and, to the extent permitted by the Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(8) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(9) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(10) "Committee" means the health benefit plan committee created pursuant to 33-22-1812.

(11) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined to be a dependent in the health benefit plan covering the employee.

(12) "Eligible employee" means an employee who works on a full-time basis and who has a normal workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual meets each of the following conditions:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce; and

(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(17) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

(19) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(20) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

(21) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.

(22) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(23) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

(24) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(25) "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of an association that:

(i) has been in existence for 1 year prior to January 1, 1994;

(ii) provides a health benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any member of its association or any employee of its members who applies for coverage as part of a group.

(26) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(27) "Standard health benefit plan" means a health benefit plan developed pursuant to 33-22-1812.

History: En. Sec. 24, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1804. *(Effective January 1, 1994)* **Applicability and scope.** This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(1) a portion of the premium or benefits is paid by or on behalf of the small employer;

(2) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; or

(3) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code.

History: En. Sec. 25, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1805 through 33-22-1807 reserved.

33-22-1808. *(Effective January 1, 1994)* **Establishment of classes of business.** (1) A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs that are related to the following reasons:

(a) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

(b) The small employer carrier has acquired a class of business from another small employer carrier.

(c) The small employer carrier provides coverage to one or more association groups that meet the requirements of 33-22-501(2).

(2) A small employer carrier may establish up to nine separate classes of business under subsection (1).

(3) The commissioner shall adopt rules to provide for a period of transition in order for a small employer carrier to come into compliance with subsection (2) in the case of acquisition of an additional class of business from another small employer carrier.

(4) The commissioner may approve the establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the action would enhance the fairness and efficiency of the small employer health insurance market.

History: En. Sec. 26, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1809. *(Effective January 1, 1994)* **Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business:

(i) the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate; or

(ii) if the Montana health care authority established by 50-4-201 certifies to the commissioner that the cost containment goal set forth in 50-4-303 is met on or before January 1, 1999, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage may not vary from the index by more than 20% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(g) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(i) The commissioner shall adopt rules to implement the provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of this part, including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

History: En. Sec. 27, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1810. *(Effective January 1, 1994)* **Renewability of coverage.** (1) A health benefit plan subject to the provisions of this part is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1)(f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of any health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) A small employer carrier that elects not to renew a health benefit plan under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area.

History: En. Sec. 28, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1811. Availability of coverage — required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition.

History: En. Sec. 29, Ch. 606, L. 1993.

Compiler's Comments

Code Commissioner Correction: In (3)(a) the Code Commissioner substituted "33-22-110" for "33-22-216". Section 33-22-216 was repealed by Ch. 451, L. 1993, and Ch. 451 enacted 33-22-110, which deals with preexisting conditions, the subject matter of 33-22-216. Section 84, Ch. 10, L. 1993, directed the Code Commissioner to make the correction.

33-22-1812. Health benefit plan committee — recommendations. (1) The commissioner shall appoint a health benefit plan committee. The committee is composed of the following members:

(a) one health care provider;

(b) one representative of the health insurance industry;

(c) one employee of a small employer;

(d) one member of a labor union; and

(e) one representative of the general public who may not represent the persons or groups listed in subsections (1)(a) through (1)(d).

(2) The committee shall, after holding a public hearing, recommend the form and level of coverages to be made by small employer carriers pursuant to 33-22-1811.

(3) (a) The committee shall recommend benefit levels, cost-sharing levels, exclusions, and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall design a basic health benefit plan and a standard health benefit plan that contain benefit and cost-sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.

(b) The plans recommended by the committee must include cost containment features, such as:

(i) utilization review of health care services, including review of the medical necessity of hospital and physician services;

(ii) case management;

(iii) selective contracting with hospitals, physicians, and other health care providers;

(iv) reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and

(v) other managed care provisions.

(c) The committee shall submit the health benefit plans described in subsections (3)(a) and (3)(b) to the commissioner within 180 days after the appointment of the committee. The commissioner shall adopt as a rule pursuant to Title 2, chapter 4, part 3, the health benefit plans required by 33-22-1811(1) to be offered in this state.

History: En. Sec. 31, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1813. *(Effective January 1, 1994)* **Standards to ensure fair marketing.** (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan.

(2) (a) Except as provided in subsection (2)(b), a small employer carrier or producer may not directly or indirectly engage in the following activities:

(i) encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(ii) encouraging or directing small employers to seek coverage from another carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subsection (2)(a) do not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (3)(b), a small employer carrier may not, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) Subsection (3)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not vary because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

(6) A small employer carrier or producer may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of an application for coverage from a small employer must be in writing and must state the reason or reasons for the denial.

(8) The commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of this section by a small employer carrier or a producer is an unfair trade practice under 33-18-102.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with an administrator who holds a certificate of registration pursuant to 33-17-603 to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the administrator is subject to this section as if the administrator were a small employer carrier.

History: En. Sec. 35, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1814. *(Effective January 1, 1994)* **Restoration of terminated coverage.** The commissioner may promulgate rules to require small employer carriers, as a condition of transacting business with small employers in this state after January 1, 1994, to reissue a health benefit plan to any small employer whose health benefit plan has been terminated or not renewed by the carrier after July 1, 1993. The commissioner may prescribe the terms for the reissuance of coverage that the commissioner finds are reasonable and necessary to provide continuity of coverage to small employers.

History: En. Sec. 36, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1815 through 33-22-1817 reserved.

33-22-1818. Small employer carrier reinsurance program — board membership. (1) There is a nonprofit entity to be known as the Montana small employer health reinsurance program.

(2) (a) The program must operate subject to the supervision and control of the board. The board consists of nine members appointed by the commissioner plus the commissioner or the commissioner's designated representative, who shall serve as an ex officio member of the board.

(b) (i) In selecting the members of the board, the commissioner shall include representatives of small employers, small employer carriers, and other qualified individuals, as determined by the commissioner. At least six of the members of the board must be representatives of small employer carriers, one from each of the five small employer carriers with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year and one from the remaining small employer carriers. One member of the board must be a person licensed, certified, or otherwise authorized by the laws of Montana to provide health care in the ordinary course of business or in the practice of a profession. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and is not employed in the health care or insurance fields.

(ii) The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

(iii) A vacancy on the board must be filled by the commissioner. The commissioner may remove a board member for cause.

(3) Within 60 days of July 1, 1993, and on or before March 1 of each year after that date, each assessable carrier shall file with the commissioner the

carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year.

History: En. Sec. 30(1)-(3), Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1819. Program plan of operation — treatment of losses — exemption from taxation. (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(3) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(4) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual fiscal yearend assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board periodically shall review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of the program for the year in an amount equal to the ratio of the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided by the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by all assessable carriers in the state.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the net loss of the program and, except as otherwise provided by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of that liability. If approved by the commissioner, the board may also make interim assessments against assessable carriers to fund claims incurred by the program. Any interim assessment must be credited against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment of a fiscal yearend or interim assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(11) The program is exempt from taxation.

(12) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

History: En. Sec. 30(4)-(15), Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1820. Periodic market evaluation — report. The board, in consultation with members of the committee, shall study and report at least every 3 years to the commissioner on the effectiveness of this part. The report must analyze the effectiveness of this part in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of this part. The report may contain recommendations for market conduct or other regulatory standards or action.

History: En. Sec. 32, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1821. Waiver of certain laws. A law that requires the inclusion of a specific category of licensed health care practitioners and a law that requires the coverage of a health care service or benefit do not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part but do apply to a standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part.

History: En. Sec. 33, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1822. Administrative procedure. The commissioner shall adopt rules in accordance with the Montana Administrative Procedure Act to implement and administer this part.

History: En. Sec. 34, Ch. 606, L. 1993.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 23

CASUALTY INSURANCE

Part 1 — General Provisions

33-23-101. Repealed.
33-23-102. Existence of insurance not to be made evident.
33-23-103. Casualty insurance policy — conformity with state statutes.

Part 2 — Motor Vehicle Liability

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.
33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.
33-23-203. Limitation of liability under motor vehicle liability policy.
33-23-204. Definitions.
33-23-205 through 33-23-210 reserved.
33-23-211. Limitations on basis for cancellation.
33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty.
33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.
33-23-214. Advance notice required for nonrenewal — exceptions.
33-23-215. No liability for statements in connection with cancellation or nonrenewal.
33-23-216. Retention and proof of notice.
33-23-217. Return of unearned premiums.

Part 3 — Professional Liability

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited.
33-23-302. Cancellation or alteration of policy — increase of premium rates — sixty days' written notice required.
33-23-303 through 33-23-310 reserved.
33-23-311. Information required of professional liability insurers — submission.

Part 4 — Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty.

Chapter Cross-References

Horseraces and race meets — public liability insurance required, 23-4-205.

Premium changes and cancellation of casualty insurance, Title 33, ch. 15, part 11.

Apportionment of casualty insurance — rating groups — pooling, 33-16-305.

Destruction of property to defraud insurer — crime, 45-6-101.

Fire losses — information available to state agencies, 50-63-401.

Suspicious fires — report, 50-63-402.

Transfer of ownership of vehicles by insurance company, 61-3-205.

Physicians, nurses, and hospitals — liens on personal injury claims, Title 71, ch. 3, part 11.

Part 1

General Provisions

33-23-101. Repealed. Sec. 4, Ch. 425, L. 1979.

History: En. Sec. 411, Ch. 286, L. 1959; amd. Sec. 5, Ch. 234, L. 1977; R.C.M. 1947, 40-4401.

33-23-102. Existence of insurance not to be made evident. No attempt may be made in the trial of an action brought against a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff.

History: En. Sec. 1, Ch. 240, L. 1963; amd. Sec. 6, Ch. 234, L. 1977; R.C.M. 1947, 40-4402; amd. Sec. 1, Ch. 425, L. 1979.

Cross-References

Nonadmissibility of liability insurance, Rule 411, M.R.Ev. (see Title 26, ch. 10).

33-23-103. Casualty insurance policy — conformity with state statutes. A casualty insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 23, Ch. 798, L. 1991.

Part 2

Motor Vehicle Liability

Part Cross-References

Attorney's fees — motor vehicle claim, 25-10-303.

Collateral source reductions in actions arising from bodily injury or death — subrogation rights, 27-1-308.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Discrimination prohibited — nongender insurance law, 49-2-309.

Motor vehicle — transfer of ownership by insurer, 61-3-205.

Motor vehicle liability policy defined — minimum limits, 61-6-103.

Motor vehicle registration — liability insurance required, Title 61, ch. 6, part 3.

Family member exclusion, 61-6-301.

Motor club service companies — insurance and services, Title 61, ch. 12, part 3.

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) No motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom, caused by an accident arising out of the operation or use of such vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, or the use of which is not insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured

had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975; R.C.M. 1947, 40-4403; amd. Sec. 7, Ch. 139, L. 1987; amd. Sec. 40, Ch. 83, L. 1989.

Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

Claims by insureds or third parties against insolvent insurers, 33-2-1367.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value. Each motor vehicle insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle must be based on a "book" value rather than on the actual replacement value is void as to such provision, and reimbursement must be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969; R.C.M. 1947, 40-4404; amd. Sec. 8, Ch. 139, L. 1987.

33-23-203. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, must be determined as follows, regardless of the number of motor vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident is the limit specified for the motor vehicle involved in the accident;

(b) if no motor vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident is the highest limit of coverage specified for any one motor vehicle insured under the policy; and

(c) the limits of coverage specified for each motor vehicle insured under the policy may not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent duplicate payments for the same element of loss.

History: En. Sec. 1, Ch. 212, L. 1981; amd. Sec. 9, Ch. 139, L. 1987.

33-23-204. Definitions. As used in this part, the following definitions apply:

(1) "Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state. The term does not include a bicycle as defined in 61-1-123.

(2) "Motor vehicle liability policy" means any policy of automobile or motor vehicle insurance against liability now or hereafter required under Title 61, chapter 6, parts 1 and 3.

History: En. Sec. 6, Ch. 139, L. 1987.

33-23-205 through 33-23-210 reserved.

33-23-211. Limitations on basis for cancellation. (1) A notice of cancellation of a motor vehicle liability policy is effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium; or

(b) the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(2) This section does not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of motor vehicle physical damage coverage by the inclusion of a deductible not exceeding $100 may not be deemed a cancellation of the coverage or of the policy.

(4) This section does not apply to nonrenewal of a motor vehicle liability policy.

History: En. Sec. 3, Ch. 262, L. 1971; R.C.M. 1947, 40-4407; amd. Sec. 10, Ch. 139, L. 1987.

Cross-References

Revocation or suspension of driver's license, Title 61, ch. 5, part 2.

33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty. (1) Notwithstanding any other provision of this code, no cancellation by an insurer of a motor vehicle liability insurance policy may be effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than 30 days after the date of such mailing or delivery, the cancellation becomes effective.

(2) No notice of cancellation of a policy to which 33-23-211 applies may be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof.

History: En. Secs. 1, 4, 7, Ch. 262, L. 1971; R.C.M. 1947, 40-4405, 40-4408, 40-4411; amd. Sec. 11, Ch. 139, L. 1987; amd. Sec. 41, Ch. 83, L. 1989.

33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of a motor vehicle liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971; R.C.M. 1947, 40-4406; amd. Sec. 12, Ch. 139, L. 1987.

Cross-References

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

33-23-214. Advance notice required for nonrenewal — exceptions. (1) No insurer may fail to renew a motor vehicle liability policy unless it mails or delivers to the named insured, at the address shown in the policy, at least 30 days' advance notice of its intention not to renew. Such notice must contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of his request, of the reason or reasons for such nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the motor vehicle liability policy must terminate on the effective date of any other replacement or succeeding motor vehicle liability policy procured by the insured with respect to any motor vehicle designated in both policies.

(3) This section does not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy or the renewal thereof or any installment payments therefor, whether payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit.

(4) This section does not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy must terminate on the effective date of any other insurance policy with respect to any motor vehicle designated in both policies;

(c) if the insured's insurance producer or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a motor vehicle liability policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) A notice of nonrenewal of a motor vehicle liability policy under this section, which policy has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211.

History: En. Sec. 5, Ch. 262, L. 1971; amd. Sec. 1, Ch. 249, L. 1975; R.C.M. 1947, 40-4409; amd. Sec. 13, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-23-215. No liability for statements in connection with cancellation or nonrenewal. There may be no liability on the part of and no cause of action of any nature may arise against the commissioner or against any insurer, its authorized representative, its insurance producers, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal for any statement made by any of them in any written notice of cancellation or nonrenewal or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971; R.C.M. 1947, 40-4412; amd. Sec. 14, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

State subject to suit unless exempted by two-thirds vote of each house of Legislature, Art. II, sec. 18, Mont. Const.

Hearings by Commissioner, 33-1-701.

Insurance information and privacy protection, Title 33, ch. 19.

33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter must be retained for a period of 3 years by the insurer or his insurance producer within this state and must be made available within this state for examination or inspection by the commissioner or his insurance producers at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's latest known address is sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971; amd. Sec. 2, Ch. 469, L. 1977; R.C.M. 1947, 40-4410; amd. Sec. 15, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-23-217. Return of unearned premiums. If an insurer cancels a motor vehicle policy covering a commercial or private motor vehicle for nonpayment of a premium, the insurer shall process the cancellation on a pro rata basis. The insurer shall return whatever gross unearned premium is due under the motor vehicle policy to the insured. For purposes of this section, the term "unearned premium" means that part of the original premium, including deposits, not yet earned by the insurer and therefore due the insured if the policy is canceled.

History: En. Sec. 1, Ch. 121, L. 1987.

Part 3
Professional Liability

Part Cross-References

Professional liability insurance, Title 33, ch. 9, part 1.

Professional licensing — medical practitioners, Title 37, ch. 3 through 12, 17, and 18.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited. Whenever an action for damages is filed against or a claim or demand for damages is made to an insurer of a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim, or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim, or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim, or demand shall not be a ground for cancellation or for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971; amd. Sec. 1, Ch. 303, L. 1973; R.C.M. 1947, 40-4413.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

33-23-302. Cancellation or alteration of policy — increase of premium rates — sixty days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent may not cancel or alter the policy insuring the person or increase the premium rates thereon without first providing the insured 60 days' written notice of the insurer's intention to cancel or alter the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973; R.C.M. 1947, 40-4414; amd. Sec. 18, Ch. 798, L. 1991.

33-23-303 through 33-23-310 reserved.

33-23-311. Information required of professional liability insurers — submission. (1) For purposes of this section, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

(2) Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession, from its experience in the state of Montana, in its annual statement to the commissioner:

(a) the number of insureds as of December 31 of the calendar year next preceding;

(b) the amount of earned premiums paid by the insureds during the calendar year next preceding;

(c) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;

(d) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;

(e) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;

(f) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;

(g) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;

(h) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:

(i) judgment or verdict for the plaintiff;

(ii) judgment or verdict for the defendant;

(iii) other;

(i) the total monetary amount paid out, in those lawsuits specified in subsection (h);

(j) the total number of the insurer's insureds included in those lawsuits specified in subsection (h);

(k) the number of new trials granted during the calendar year next preceding;

(l) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and

(m) such other information and statistics as the commissioner considers necessary.

(3) The commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to this section relevant to the particular profession or facility.

History: (1)En. 40-2827 by Sec. 1, Ch. 212, L. 1977; Sec. 40-2827, R.C.M. 1947; (2)En. 40-2828 by Sec 2, Ch. 212, L. 1977; Sec. 40-2828, R.C.M. 1947; (3)En. 40-2829 by Sec. 3, Ch. 212, L. 1977; Sec. 40-2829, R.C.M. 1947; R.C.M. 1947, 40-2827, 40-2828, 40-2829.

Cross-References

Statistical records of court actions — Supreme Court administrator, 3-1-702.

Board of Medical Examiners — insurer reporting requirements, 37-3-402.

Part 4
Homes

Part Cross-References

Credit insurance on real property — borrower allowed choice of insurers, 33-18-501.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) No insurer shall cancel or refuse to renew any policy insuring private residences including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile without first giving to the insured 30 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104.

History: En. Secs. 1, 2, Ch. 374, L. 1971; amd. Secs. 1, 2, Ch. 82, L. 1975; R.C.M. 1947, 40-4415, 40-4416.

Cross-References

Homeowner insurance not affected by day-care operations, 33-15-1111.

CHAPTER 24

PROPERTY INSURANCE

Part 1 — General Provisions

33-24-101. Measure of the indemnity — rescission for fraud.
33-24-102. Insuring improvements — insurance equal to true value.
33-24-103. Specific valuation — loss equal to insured value.
33-24-104. Tax lien on insured property destroyed by fire.
33-24-105. Property insurance policy — conformity with state statutes.

Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Consumer loans — insurance as security, 32-5-306.

Property insurance — definition, 33-1-210.

Premium changes and cancellation of property insurance, Title 33, ch. 15, part 11.

Credit insurance on real or personal property — borrower gets choice of insurers, 33-18-501.

Destruction of property to defraud insurer — crime, 45-6-101.

Discrimination prohibited — nongender insurance law, 49-2-309.

Fire losses — information available to state agencies, 50-63-401.

Report of suspicious fires, 50-63-402.

Part 1

General Provisions

33-24-101. Measure of the indemnity — rescission for fraud. If there is no valuation in the policy and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

History: En. Sec. 409, Ch. 286, L. 1959; R.C.M. 1947, 40-4301.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

"Valued" and "open" policies — construction, 33-15-316.

33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

History: En. Sec. 410, Ch. 286, L. 1959; R.C.M. 1947, 40-4302; amd. Sec. 25, Ch. 303, L. 1981.

Cross-References

"Valued" and "open" policies — construction, 33-15-316.

33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any total loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974; R.C.M. 1947, 40-4303; amd. Sec. 26, Ch. 303, L. 1981.

33-24-104. Tax lien on insured property destroyed by fire. If taxes are due and unpaid on property covered by fire insurance and damaged or destroyed by fire, the government entity owed the taxes has a lien on fire insurance proceeds paid in relation to that property in the amount of the unpaid taxes.

History: En. Sec. 2, Ch. 447, L. 1989.

33-24-105. Property insurance policy — conformity with state statutes. A property insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 24, Ch. 798, L. 1991.

CHAPTER 25

MONTANA TITLE INSURANCE ACT

Part 1 — General Provisions

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.
33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.
33-25-103. Repealed.
33-25-104. Short title.
33-25-105. Definitions.
33-25-106. Application.
33-25-107 through 33-25-110 reserved.
33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report.

Part 2 — Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — rules.
33-25-202. Sharing of rate proceeds.
33-25-203 through 33-25-210 reserved.
33-25-211. Guaranty fund — investments.
33-25-212. Rates filed with commissioner.
33-25-213. Limitations on authority.
33-25-214. Underwriting standards — record retention.

33-25-215. Report of claims.
33-25-216. Notice of issuance of mortgagee policy.

Part 3 — Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title insurance producer's license.
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Part 4 — Prohibited Practices—Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions.
33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction.
33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer.

Chapter Cross-References

Title plant owned by title insurer or title insurance producer — exemption from taxation, 15-6-201.

Title plant owned by title insurer or title insurance producer — deduction of value from taxable property, 15-24-602.

Title insurance — definition, 33-1-212.

Policy forms to be approved by Commissioner, Title 33, ch. 1, part 5.

Combinations of insuring powers, 33-2-108.

Special investments by title insurer, 33-2-851.

Examination of applicant for title insurance producer's license, 33-17-212.

Discrimination prohibited — nongender insurance law, 49-2-309.

Authority to be trustee — trust indentures, 71-1-306.

Part 1
General Provisions

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.

33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.

33-25-103. Repealed. Sec. 22, Ch. 519, L. 1985.

History: En. Sec. 415, Ch. 286, L. 1959; R.C.M. 1947, 40-4601; amd. Sec. 2, Ch. 84, L. 1983.

33-25-104. Short title. This chapter may be cited as the "Montana Title Insurance Act".

History: En. Sec. 1, Ch. 519, L. 1985.

33-25-105. Definitions. As used in this chapter, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title insurance producer for a title insurance policy, but does not include a title insurance producer.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification

as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in the title insurer or title insurance producer.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property; or

(c) acting as broker, insurance producer, or representative of a person described in subsection (8)(a) or (8)(b).

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title insurance producer, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title.

(12) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(13) (a) "Title insurance producer" means a person who holds a valid title insurance producer's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) Title insurance producer does not include an approved attorney.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

History: En. Sec. 2, Ch. 519, L. 1985; amd. Secs. 1, 3, Ch. 713, L. 1989.

Cross-References

Title plant owned by title insurer or title insurance producer — exemption from taxation, 15-6-201.

Title plant owned by title insurer or title insurance producer — deduction of value from taxable property, 15-24-602.

Title insurance — definition, 33-1-212.

33-25-106. Application. (1) This chapter applies to all title insurers, title insurance rating organizations, title insurance producers, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) This chapter does not authorize the practice of law by a person who is not licensed to practice law in this state, and this chapter does not authorize the commissioner to regulate the practice of law.

History: En. Sec. 3, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

33-25-107 through 33-25-110 reserved.

33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

History: En. Sec. 4, Ch. 519, L. 1985.

Part 2

Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — rules. (1) A title insurer or title insurance producer may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title insurance producer shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title insurance producer. A title insurer or insurance producer may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title insurance producer must keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title insurance producer has complied with all applicable provisions of this title.

History: En. Sec. 7, Ch. 519, L. 1985; amd. Secs. 1, 3, Ch. 713, L. 1989.

33-25-202. Sharing of rate proceeds. Title insurers and insurance producers may share rate proceeds between or among themselves in any combination and may accept commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

History: En. Sec. 11, Ch. 519, L. 1985; amd. Sec. 61, Ch. 713, L. 1989.

33-25-203 through 33-25-210 reserved.

33-25-211. Guaranty fund — investments. A title insurer shall establish and maintain the guaranty fund required under 33-2-517 and may invest in necessary plant and equipment and in other investments as authorized under 33-2-851.

History: En. Sec. 417, Ch. 286, L. 1959; R.C.M. 1947, 40-4603; Sec. 33-25-101, MCA 1983; redes. 33-25-211 by Code Commissioner, 1985.

33-25-212. Rates filed with commissioner. (1) Every title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. The rates shall be all-inclusive of the total charge for such insurance as specified in the policy and shall be accompanied by supporting data.

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner.

History: En. Sec. 416, Ch. 286, L. 1959; R.C.M. 1947, 40-4602; amd. Sec. 27, Ch. 303, L. 1981; Sec. 33-25-102, MCA 1983; redes. 33-25-212 by Code Commissioner, 1985.

Cross-References

Hearings by Commissioner, 33-1-701.

33-25-213. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title insurance producers or approved attorneys in the normal course of its business.

History: En. Sec. 5, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

Cross-References
Combinations of insuring powers, 33-2-108.

33-25-214. Underwriting standards — record retention. (1) A title insurer may not issue a title insurance policy unless it, its title insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, a title insurer or title insurance producer may not knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising under the policy.

History: En. Sec. 6, Ch. 519, L. 1985; amd. Sec. 62, Ch. 713, L. 1989.

33-25-215. Report of claims. A title insurance producer must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

History: En. Sec. 9, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

33-25-216. Notice of issuance of mortgagee policy. (1) A title insurer or title insurance producer that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title insurance producer must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title insurance producer must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title insurance producer for at least 5 years after receipt.

History: En. Sec. 15, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

Part 3

Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title insurance producer's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title insurance producer or may suspend or revoke a title insurance producer's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title insurance producer license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title insurance producer's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a person licensed as a title insurance producer for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

History: En. Sec. 10, Ch. 519, L. 1985; amd. Sec. 63, Ch. 713, L. 1989.

33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title insurance producer and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the insurance producer's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title insurance producer. Factors the commissioner may consider in this determination include but are not limited to the insurance producer's duties under the contract and the general level of amounts paid to or retained by other title insurance producers in the state performing or assuming comparable duties.

(2) A person may not act as a title insurance producer under an agency contract that has been disapproved by the commissioner.

History: En. Sec. 8, Ch. 519, L. 1985; amd. Sec. 64, Ch. 713, L. 1989.

Part 4
Prohibited Practices — Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions. (1) Except as provided in subsection (2), a person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title insurance producer; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title insurance producer to which the person is referred; and

(ii) the person is not required to use a particular insurance producer.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as insurance producer or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

History: En. Sec. 12, Ch. 519, L. 1985; amd. Sec. 65, Ch. 713, L. 1989.

33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction. (1) A person found to have violated the provisions of 33-25-401 is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on 33-25-401 and this section, the court may award to the prevailing party court costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of 33-25-401.

History: **En. Sec. 13, Ch. 519, L. 1985.**

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer. A producer or associate may not, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title insurance producer. A title insurer or title insurance producer may not knowingly participate in a plan or transaction prohibited by this section.

History: **En. Sec. 14, Ch. 519, L. 1985; amd. Sec. 66, Ch. 713, L. 1989.**

CHAPTER 26

SURETYSHIP

Part 1 — Surety Insurance

33-26-101. Corporations as sureties.
33-26-102. Requisites of undertakings or bonds of individuals.
33-26-103. Rights of surety insurer to give bond.
33-26-104. Surety insurers as sole surety on official bonds — release.
33-26-105. Surety companies not permitted to furnish bonds where indemnity required.
33-26-106. Cost of surety bond to be allowed in account of officer.
33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety.

Chapter Cross-References

Suretyship, Title 28, ch. 11, part 4.

Surety insurance — definition, 33-1-211.

Guaranteed arrest bond certificates — filing undertaking, 46-9-412.

Part 1

Surety Insurance

33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and shall be accepted as security or as a sole and sufficient security upon such undertaking or bond, and such corporate surety shall be subject to all liabilities and entitled to all the rights of natural persons as such sureties.

(2) Whenever the liabilities of any such corporation shall exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not so paid up, then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for 3 weeks in a daily paper published in the town or city wherein the principal office of such

corporation is, and until such deficiency is paid up such company shall not be accepted as a surety on any undertaking or bond. In estimating the condition of any such company, the state auditor shall allow as assets only such as are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by said company on all risks then in force.

History: Ap. p. Sec. 1, p. 70, L. 1893; re-en. Sec. 1900, C. Civ. Proc. 1895; re-en. Sec. 7193, Rev. C. 1907; re-en. Sec. 9826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1056; re-en. Sec. 9826, R.C.M. 1935; Sec. 93-8711, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8711, 93-8712(part).

Cross-References

Appeals to Supreme Court — applicability, Rule 8, M.R.App.P. (see Title 25, ch. 21).

33-26-102. Requisites of undertakings or bonds of individuals. In all cases where an undertaking or bond or undertaking with sureties is authorized or required by any law of this state, the officer taking the same must, except in the case of corporations as mentioned in 33-26-101, require the sureties to accompany it with an affidavit that they are each responsible and are residents and householders or freeholders within the state and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution. When the amount specified in the undertaking or bond exceeds $3,000 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond if the whole amount be equivalent to that of two sufficient sureties.

History: Ap. p. Sec. 433, p. 131, Bannack Stat.; re-en. Sec. 593, p. 157, Cod. Stat. 1871; re-en. Sec. 523, p. 177, L. 1877; re-en. Sec. 523, 1st Div. Rev. Stat. 1879; re-en. Sec. 540, 1st Div. Comp. Stat. 1887; en. Sec. 1899, C. Civ. Proc. 1895; re-en. Sec. 7192, Rev. C. 1907; re-en. Sec. 9825, R.C.M. 1921; re-en. Sec. 9825, R.C.M. 1935; Sec. 93-8710, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8710, 93-8712(part).

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Appeals to Supreme Court — applicability, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Appeals from Justice's Court — applicability, 25-33-203.

Affidavit — definition, 26-1-1001.

33-26-103. Rights of surety insurer to give bond. A surety insurer authorized as such under this code shall have the power to become the surety on bonds and undertakings required by law, subject to all the rights and liabilities of private persons. This section shall not be deemed to limit in any way the powers, obligations, and liabilities of such insurers as provided for in other provisions of this code.

History: En. Sec. 412, Ch. 286, L. 1959; R.C.M. 1947, 40-4501.

Cross-References

Suretyship — general provisions, Title 28, ch. 11, part 4.

Certificate of authority required, 33-2-101.

33-26-104. Surety insurers as sole surety on official bonds — release. (1) Whenever any bond, undertaking, recognizance, or other obligation is by law or the charter, ordinance, or rules of any municipality, board, body, organization or public officer required or permitted to be made, given, tendered, or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation or the refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guaranty may be executed by a surety insurer qualified to act as surety or guarantor as in this code provided. Such execution by such insurer of such bond, undertaking, obligation, recognizance, or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, or rule that such bond, undertaking, obligation, recognizance, or guaranty shall be executed by one surety or by one or more sureties or that such surety shall be a resident or householder or freeholder, or either or both, or possessed of any other qualifications. All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance, or guaranty when so executed by such insurer, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, or rule.

(2) A surety insurer may be released from its liability on a bond referred to in this section upon the same terms and conditions as are by law prescribed for the release of individual sureties.

History: En. Secs. 413, 414, Ch. 286, L. 1959; R.C.M. 1947, 40-4502, 40-4503.

Cross-References

Official bonds — general provisions, Title 2, ch. 9, parts 5 through 8.

33-26-105. Surety companies not permitted to furnish bonds where indemnity required. No foreign or other surety company shall be permitted to furnish the bond for any state, county, or city official, where such company requires in addition to the payment of reasonable premiums any indemnity or other security.

History: En. Sec. 1, Ch. 6, L. 1911; re-en. Sec. 6234, R.C.M. 1921; re-en. Sec. 6234, R.C.M. 1935; R.C.M. 1947, 40-1725.

Cross-References

Indemnity defined, 28-11-301.

33-26-106. Cost of surety bond to be allowed in account of officer. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety.

History: En. Sec. 23, Ch. 139, L. 1909; re-en. Sec. 6228, R.C.M. 1921; re-en. Sec. 6228, R.C.M. 1935; R.C.M. 1947, 40-1724.

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It shall be lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof without the written consent of such surety or sureties or an order of court or a judge thereof made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

History: En. Sec. 1, Ch. 146, L. 1943; R.C.M. 1947, 40-1703.

CHAPTER 27

INDEPENDENT LIABILITY FUND

Part 1 — General Provisions

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Part 1

General Provisions

33-27-101. Short title. Sections 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter may be cited as the "Independent Liability Fund Act".

History: En. Sec. 1, Ch. 564, L. 1987.

33-27-102. Purpose. The purpose of 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties.

History: En. Sec. 2, Ch. 564, L. 1987.

33-27-103. Definitions. As used in 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter, the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana individual income tax, corporate license tax, or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business.

History: En. Sec. 3, Ch. 564, L. 1987.

33-27-104. Rules. (1) The commissioner has authority to implement this chapter and to make any rules and regulations required to carry out the purposes of this chapter.

(2) The commissioner shall by rule establish criteria for ascertaining the inviolability and health of each independent liability fund and shall initiate sanctions against funds that are not secure or viable.

History: En. Sec. 19, Ch. 564, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-27-105 through 33-27-110 reserved.

33-27-111. Right to establish independent liability fund. A small business operating in the state may establish an independent liability fund to provide for defense, settlement, or payment of any liability claims against it by a third party.

History: En. Sec. 4, Ch. 564, L. 1987.

33-27-112. Establishment of independent liability fund. A small business shall notify the commissioner, on a form supplied by the commissioner, of its intention to establish an independent liability fund. The small business shall fully and clearly designate the money, assets, or investments it is setting aside for its independent liability fund.

History: En. Sec. 5, Ch. 564, L. 1987.

33-27-113. Additions to independent liability fund. Within the limits provided in 33-27-114, a small business may make such additions to its independent liability fund as it considers appropriate.

History: En. Sec. 6, Ch. 564, L. 1987.

33-27-114. Limit on the amount of fund. The independent liability fund of any small business may not be greater than the larger of the following:

(1) the total of all legally required liability insurance; or

(2) five times the gross sales of the small business in its most recent fiscal year.

History: En. Sec. 7, Ch. 564, L. 1987.

33-27-115. Composition of independent liability fund. The money, assets, and investments contributed to an independent liability fund must meet the criteria established for investments by an insurance company in Title 33, chapter 2, part 8, and must be valued as such assets and investments would be valued.

History: En. Sec. 8, Ch. 564, L. 1987.

33-27-116. Inviolability of fund. Once money, assets, or investments have been contributed to an independent liability fund, they may not be used or removed from the fund except in the manner prescribed by 33-27-117 and 33-27-119.

History: En. Sec. 12, Ch. 564, L. 1987.

33-27-117. Deduction of costs. (1) The actual costs of administering an independent liability fund may be deducted from the fund or from income arising out of the money, assets, and investments in the fund. Such costs include the cost of defending against or negotiating a settlement of any liability claim, as well as the full amount of any claim paid.

(2) A small business may not deduct the cost of any in-house administration of its independent liability fund. The commissioner may review any third-party arrangement for administration of an independent liability fund to ascertain whether such costs are deductible under this section.

History: En. Sec. 13, Ch. 564, L. 1987.

33-27-118. Taxation of independent liability fund contributions. The net value of independent liability fund contributions for any given fiscal year is taxed in accordance with 33-2-705(2).

History: En. Sec. 16, Ch. 564, L. 1987.

33-27-119. Termination of independent liability fund. (1) When a small business with an independent liability fund ceases its operations, either voluntarily or involuntarily, it shall provide a trust to administer any principal remaining in its fund and to pay any outstanding claims for the longest of the following applicable periods:

(a) any statute of limitations applicable to operations of that particular small business;

(b) any legally required period of insurance coverage; or

(c) 15 years.

(2) The principal of an independent liability fund must remain inviolate, except as it is needed to pay just claims, for the full applicable termination period. However, income from the principal not needed for administrative costs may be paid during the termination period to the person or persons who are designated to ultimately receive the principal of the fund, and such income is taxable to that person or persons.

History: En. Sec. 17, Ch. 564, L. 1987.

CHAPTERS 28 AND 29

RESERVED

CHAPTER 30

HEALTH SERVICE CORPORATIONS

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Chapter Cross-References

Jurisdiction of providers of health care benefits, Title 33, ch. 1, part 11.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Licenses — discrimination in issuance prohibited, 49-3-204.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

Part 1
General Provisions

33-30-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; licensed acupuncturist services; licensed social worker, licensed professional counselor, or psychologist; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries.

History: En. 40-5901 by Sec. 1, Ch. 319, L. 1975; R.C.M. 1947, 40-5901(1) thru (3); amd. Sec. 14, Ch. 544, L. 1983; amd. Sec. 3, Ch. 606, L. 1987; amd. Sec. 2, Ch. 362, L. 1991.

Cross-References

Board of social work examiners, 2-15-1854.

Nonprofit corporations, Title 35, ch. 2.

Licensing — medical professions, Title 37.

Qualifications and licensing of social workers, Title 37, ch. 22.

33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-17-212 through 33-17-214 and chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this chapter, the latter shall prevail.

History: En. 40-5902 by Sec. 2, Ch. 319, L. 1975; R.C.M. 1947, 40-5902; amd. Sec. 3, Ch. 558, L. 1987.

Cross-References

Insurance Code — exception for health service corporations, 33-1-102.

Applicable provisions of Insurance Code:

Administrative penalty for failure to pay promptly, 33-18-233.

Insurance information and privacy protection, 33-19-104.

Medicare Supplement Insurance Minimum Standards, 33-22-903.

33-30-103. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) (a) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(b) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships, or individuals in the field of health care and services; and

(2) research, education, or related activity to further objects within the purview of this chapter.

History: En. 40-5903 by Sec. 3, Ch. 319, L. 1975; R.C.M. 1947, 40-5903.

33-30-104. No profit organization may be a health service corporation. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this chapter.

History: En. 40-5904 by Sec. 4, Ch. 319, L. 1975; R.C.M. 1947, 40-5904.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined, its officers, employees, and insurance producers, shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets,

and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or his examiner shall make a verified report of the examination.

(5) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

(7) The health service corporation shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413.

History: En. 40-5912 by Sec. 12, Ch. 319, L. 1975; R.C.M. 1947, 40-5912; amd. Sec. 3, Ch. 452, L. 1981; amd. Sec. 4, Ch. 558, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Contested cases — administrative hearings, 2-4-102; Title 2, ch. 4, part 6.

33-30-106. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this chapter are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

History: En. 40-5916 by Sec. 16, Ch. 319, L. 1975; R.C.M. 1947, 40-5916.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-30-107. Annual statement. Every health service corporation shall file an annual statement on a form containing substantially the same information as that contained in form No. 13 N.A.I.C. with the commissioner of insurance.

History: En. Sec. 1, Ch. 657, L. 1979.

33-30-108. License required. (1) No person may act as a health service corporation and no health service corporation may conduct business in this state except as authorized by a license issued by the commissioner.

(2) Such license may be issued by the commissioner only after the person has complied with the applicable provisions of this title.

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204(1)(i) and upon continued compliance with the provisions of this title.

(4) A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title.

History: En. Sec. 10, Ch. 558, L. 1987.

Cross-References

Compliance with Montana Insurance Code required, 33-1-102.

General powers and duties of Commissioner, 33-1-311.

License fees, 33-30-204.

33-30-109 and 33-30-110 reserved.

33-30-111. Notice of violation — conference. If the commissioner shall for any reason have cause to believe that violation of this chapter has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

History: En. 40-5920 by Sec. 20, Ch. 319, L. 1975; R.C.M. 1947, 40-5920; amd. Sec. 85, Ch. 370, L. 1987; amd. Sec. 8, Ch. 606, L. 1987.

33-30-112. Cease and desist order. (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act.

History: En. 40-5921 by Sec. 21, Ch. 319, L. 1975; R.C.M. 1947, 40-5921; amd. Sec. 86, Ch. 370, L. 1987; amd. Sec. 9, Ch. 606, L. 1987.

Cross-References

Contested case — administrative proceeding, Title 2, ch. 4, part 6.

33-30-113. Injunctive relief. In the case of any violation of the provisions of this chapter if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

History: En. 40-5922 by Sec. 22, Ch. 319, L. 1975; R.C.M. 1947, 40-5922; amd. Sec. 87, Ch. 370, L. 1987; amd. Sec. 10, Ch. 606, L. 1987.

Cross-References

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

Part 2

Finance

33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner shall be maintained in an amount not less than:

(a) $500,000; or

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period.

(4) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

(5) The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.

History: **En. 40-5905 by Sec. 5, Ch. 319, L. 1975; R.C.M. 1947, 40-5905.**

33-30-202. Annual report. All corporations subject to the provisions of this chapter shall make and file annually with the commissioner, on or before March 1 of each year, a report under oath setting forth:

(1) the name of the corporation;

(2) the address of its registered office in this state and the name of its registered agent at that address;

(3) the names and addresses of its directors and officers;

(4) a brief statement of the character of the affairs which the corporation is actually conducting;

(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;

(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;

(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.

History: **En. 40-5911 by Sec. 11, Ch. 319, L. 1975; R.C.M. 1947, 40-5911.**

33-30-203. Premium tax exemption. A health service corporation is exempt from all premium taxes.

History: **En. 40-5915 by Sec. 15, Ch. 319, L. 1975; R.C.M. 1947, 40-5915.**

Cross-References

Premium taxes, 33-2-705.

33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) insurance producer's license:

(i) application for original license and issuance of license $15

(ii) annual renewal	$15
(iii) examination for license, for each examination	$15
(b) filing any other statement or report	$1
(c) for a certified copy of any document or other paper filed in the office of the commissioner, per page	$.50
(d) for the certificate and for affixing the seal thereto	$10
(e) filing of a membership contract	$25
(f) filing of a membership contract package	$100
(g) filing annual report, other than as part of application for original license	$25
(h) issuance of health service corporation license	$300
(i) annual continuation of health service corporation license	$300

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the general fund, all fees and license fees received by him under this section.

History: En. 40-5917 by Sec. 17, Ch. 319, L. 1975; R.C.M. 1947, 40-5917; amd. Sec. 1, Ch. 452, L. 1981; amd. Sec. 5, Ch. 558, L. 1987; amd. Sec. 7, Ch. 351, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

License required of health service corporations, 33-30-108.

Part 3

Operations

33-30-301. Forms — filing, approval. A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with and approved by the commissioner of this state and the insurance regulator of the state of domicile of the health service corporation in accordance with chapter 1, part 5.

History: En. 40-5906 by Sec. 6, Ch. 319, L. 1975; R.C.M. 1947, 40-5906; amd. Sec. 2, Ch. 452, L. 1981; amd. Sec. 6, Ch. 558, L. 1987.

Cross-References

Contested case — administrative hearing, Title 2, ch. 4, part 6.

Initiating judicial review of administrative proceeding, 2-4-702.

Stays of agency opinions — appeals, 2-4-711.

33-30-302. Allowed contracts. (1) A corporation subject to the provisions of this chapter may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

(a) hospitals maintained by a governmental body or agency;

(b) hospitals maintained by a nonprofit corporation organized for hospital purposes; or

(c) other corporations, organizations, associations, partnerships, or individuals furnishing health services.

(2) A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(a) the transfer of members or beneficiaries;

(b) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations; or

(c) other joint undertakings the corporation's board of directors approves.

History: En. 40-5907 by Sec. 7, Ch. 319, L. 1975; R.C.M. 1947, 40-5907.

33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation.

History: En. 40-5913 by Sec. 13, Ch. 319, L. 1975; R.C.M. 1947, 40-5913.

33-30-304. Nonliability for injuries caused by contractees. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance, or malpractice on the part of any person, organization, agency, or corporation rendering health services to the health service corporation's members and beneficiaries.

History: En. 40-5914 by Sec. 14, Ch. 319, L. 1975; R.C.M. 1947, 40-5914.

33-30-305. Prohibited trade practices. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby.

(2) No person may make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

(3) No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of a health service corporation which is untrue, deceptive, or misleading.

(4) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership contract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(5) No person may file with any public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a health service corporation with intent to deceive.

(6) No person may make any false entry in any book, report, or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom that health service corporation is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that health service corporation in any book, report, or statement of the health service corporation.

(7) No person may make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a health service corporation or of an organization proposing to become a health service corporation and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(8) No person may enter into agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

History: En. 40-5918 by Sec. 18, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(intro.), (1) thru (7).

Cross-References

Civil libel actions, 27-1-802.

Unsworn falsification to authorities — crime, 45-7-203.

Criminal defamation, 45-8-212.

33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited. (1) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder or in any of the terms and conditions of such contract or in any manner whatever.

(2) Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

(3) Nothing contained in subsection (1) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the preauthorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(4) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. 40-5918, 40-5919 by Secs. 18, 19, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(8), 40-5919.

33-30-307. Notice of rate increases. (1) A health service corporation must inform members covered under individual plans of any rate increase at least 45 days prior to such increase.

(2) The premium rate for an individual policy converted from a group plan in accordance with 33-30-1007(3) may not be increased during the first 6 months of coverage of the individual policy.

History: En. Sec. 2, Ch. 309, L. 1983; amd. Sec. 7, Ch. 558, L. 1987.

33-30-308 through 33-30-310 reserved.

33-30-311. Insurance producer. (1) A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this chapter is an insurance producer of that corporation.

(2) The definitions of insurance producer as defined in this chapter do not include an individual:

(a) employed and used by insurance producers for the performance of clerical, stenographic, and similar office duties;

(b) employed and used for incidental taking of an application for coverage from time to time in the office of the employing insurance producer;

(c) who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.

History: En. 40-5908 by Sec. 8, Ch. 319, L. 1975; R.C.M. 1947, 40-5908; amd. Sec. 1, Ch. 713, L. 1989.

33-30-312. Insurance producer — filing with and approval by commissioner — license. (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an insurance producer. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license which states that the person named is a constituted insurance producer of the corporation in this state if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's insurance producer; and

(b) he qualifies under the provisions of this section.

(2) For appointees who have not acted as an insurance producer for a health service corporation for a period of 2 years prior to July 1, 1975, if he

considers it desirable, the commissioner may require an appointee to submit to an examination to determine the qualifications of the appointee to act as an insurance producer in this state. This examination must be the same as given to applicants for a disability insurance producer license as provided for in 33-17-212 through 33-17-214. A person required to take this examination must fulfill the prelicensing education requirement set by 33-17-208.

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its insurance producer, that person has a temporary insurance producer's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an insurance producer ceases on the day the corporation is notified of rejection.

History: En. 40-5909 by Sec. 9, Ch. 319, L. 1975; R.C.M. 1947, 40-5909; amd. Sec. 8, Ch. 558, L. 1987; amd. Sec. 8, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Former criminal offenders — applicability to licensing, Title 37, ch. 1, part 2.

33-30-313. Licenses — refusal to issue — suspension — revocation — hearing. (1) If for cause shown and after a hearing or examination the commissioner determines a person is unsuitable to act as an insurance producer, he shall:

(a) (i) refuse to issue a license; or

(ii) revoke a license previously issued; and

(b) notify in writing both the appointee and the corporation of refusal.

(2) Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an insurance producer to act for it, a license issued or a renewal thereof expires on January 1 after its issuance. A license may be renewed annually upon payment of the annual license renewal fee as prescribed in 33-30-204.

(3) The commissioner may suspend, for not more than 12 months, or revoke or refuse to continue any license issued under this chapter if he finds that as to the licensee any one or more of the following causes exist:

(a) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) obtaining or attempting to obtain a license through misrepresentation or fraud;

(c) violation of or noncompliance with applicable provisions of this chapter or willful violation of any lawful rule or order of the commissioner;

(d) misappropriation or conversion to his own use or illegal withholding moneys or property belonging to the health service corporation, its members, beneficiaries, or others and received in conduct of business under the license;

(e) conviction of a felony involving moral turpitude;

(f) fraudulent or dishonest practices in the conduct of his affairs under the license; or

(g) incompetence, untrustworthiness, or injury and loss to the public while acting under the license.

(4) The action taken under subsection (3) shall be the result of a hearing granted the licensee with 20 days' notice. The notice and the reasons for the

commissioner's action shall be by certified mail to the licensee and the corporation.

History: En. 40-5910 by Sec. 10, Ch. 319, L. 1975; R.C.M. 1947, 40-5910; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licensing — applicability of Montana Administrative Procedure Act, 2-4-631.

Felony — definition, 45-2-101.

Licenses — discrimination in issuance prohibited, 49-3-204.

Parts 4 through 9 reserved

Part 10
Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation. No disability insurance plan or group disability insurance plan issued by a health service corporation may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period.

History: En. Sec. 5, Ch. 74, L. 1973; R.C.M. 1947, 15-2304.1; amd. Sec. 28, Ch. 303, L. 1981.

Cross-References

Child support enforced by Department of Social and Rehabilitation Services — insurance coverage required, 40-5-208.

33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance. (1) From and after February 14, 1973, it shall be unlawful for any health service corporation issuing membership contracts in Montana to exclude from coverage in a membership contract services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the membership contract if rendered to him outside a Montana state institution.

(2) A membership contract is considered issued in Montana if the insured purchasing the membership contract is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a membership contract issued in Montana after February 14, 1973, the provision is void and the membership contract will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the membership contract, which would be paid for the services if rendered outside a Montana state institution.

(5) No membership contract issued by a health service corporation on or after July 1, 1979, may deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 3, Ch. 169, L. 1979.

Cross-References

State institutions — Department of Family Services, 52-1-105.

State institutions — Department of Corrections and Human Services, 53-1-202.

33-30-1003. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738(part), 40-3740.

33-30-1004. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation, by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739(part), 40-3740.

33-30-1005. Right of rescission. Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to whom the contract is issued is not satisfied for any reason, he is permitted to return the contract within 10 days of its delivery, or such longer period as the contract may provide, and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning.

History: En. Sec. 2, Ch. 342, L. 1979.

Cross-References

Rescission, 28-2-1711 through 28-2-1716.

33-30-1006. Continuing group coverage after termination. A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged the members of the group.

History: En. Sec. 5, Ch. 579, L. 1981.

33-30-1007. Conversion on termination of eligibility. (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, as a result of an employer discontinuing his business, or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, such person shall, provided he has been insured for a period of 3 months and that he is not insured under another major medical disability insurance policy or plan, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy.

History: En. Sec. 6, Ch. 579, L. 1981; amd. Sec. 1, Ch. 309, L. 1983; amd. Sec. 9, Ch. 558, L. 1987; amd. Sec. 2, Ch. 200, L. 1991.

33-30-1008. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract.
History: En. Sec. 7, Ch. 579, L. 1981.

33-30-1009. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.
History: En. Sec. 8, Ch. 579, L. 1981.

33-30-1010. Renumbered 33-30-1021 by Code Commissioner, 1983.

33-30-1011. Dentists performing services common to both medicine and dentistry. A contract or plan may exclude coverage for dental care or services, but no individual or group membership contract or plan issued or renewed on or after October 1, 1983, may disallow payment to a dentist for health care or services for which a physician would be paid, provided the dentist is licensed under the law of this state to perform such care or service.
History: En. Sec. 1, Ch. 471, L. 1983.

33-30-1012. Repealed. Sec. 4, Ch. 606, L. 1987.
History: En. Sec. 15, Ch. 572, L. 1985.

33-30-1013. Coverage required for services provided by nurse specialists. A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by a nurse specialist, as specifically listed in 37-8-202(5), if health care services that nurse specialists are licensed to perform are covered by the contract.
History: En. Sec. 2, Ch. 329, L. 1987.

33-30-1014. Coverage for well-child care. (1) Each disability insurance plan or group disability insurance plan that is delivered, issued for delivery, renewed, extended, or modified in this state by a health service corporation and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the plan.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered at the intervals required in that subsection by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a disability insurance plan or group disability insurance plan issued by a health service corporation provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the health service corporation that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 3, Ch. 199, L. 1991.

33-30-1015. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-30-1007 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-30-1007;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

History: En. Sec. 4, Ch. 200, L. 1991.

33-30-1016. Coverage for adopted children from time of placement — preexisting conditions. (1) Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from

placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

History: **En. Sec. 2, Ch. 387, L. 1991.**

33-30-1017 through 33-30-1020 reserved.

33-30-1021. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: **En. Sec. 9, Ch. 579, L. 1981; MCA 1981, 33-30-1010; redes. 33-30-1021 by Code Commissioner, 1983.**

Part 11
Subrogation — Notice

Part Cross-References

State employee group insurance — subrogation — notice, Title 2, ch. 18, part 9.

Disability insurance — subrogation — notice, Title 33, ch. 22, part 16.

33-30-1101. Subrogation rights. A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to subrogation, as provided for in 33-30-1102, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

History: **En. Sec. 2, Ch. 365, L. 1987.**

33-30-1102. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by 33-30-1101.

(4) The health service corporation's right of subrogation granted in 33-30-1101 may not be enforced until the injured insured has been fully compensated for his injuries.

History: **En. Sec. 4, Ch. 365, L. 1987.**

CHAPTER 31

HEALTH MAINTENANCE ORGANIZATIONS

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Part 1
General Provisions

33-31-101. Short title. This chapter may be cited as the "Montana Health Maintenance Organization Act".

History: En. Sec. 1, Ch. 457, L. 1987.

33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

(3) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(4) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(5) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(6) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(7) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(8) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(9) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(10) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(11) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of his practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(12) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent.

History: En. Sec. 2, Ch. 457, L. 1987; amd. Sec. 3, Ch. 34, L. 1989; amd. Sec. 2, Ch. 80, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 437, L. 1991; amd. Sec. 2, Ch. 663, L. 1991.

Cross-References

Disability insurance — coverage for phenylketonuria treatment, 33-22-131.

33-31-103. Rules. The commissioner may, after notice and hearing, make reasonable rules necessary to effectuate this chapter.

History: En. Sec. 20, Ch. 457, L. 1987; amd. Sec. 2, Ch. 437, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-31-104. Repealed. Sec. 10, Ch. 437, L. 1991.

History: En. Sec. 27, Ch. 457, L. 1987.

33-31-105 through 33-31-110 reserved.

33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

History: En. Sec. 24, Ch. 457, L. 1987.

33-31-112. Filings and reports as public documents. All applications, filings, and reports required under this chapter, except those that contain trade secrets or privileged or confidential commercial or financial information (other than an annual financial statement that the commissioner may require under 33-31-211), are public documents.

History: En. Sec. 25, Ch. 457, L. 1987.

33-31-113. Confidentiality of medical information. (1) Any data or information pertaining to the diagnosis, treatment, or health of an enrollee or applicant obtained from the enrollee, applicant, or a provider by a health maintenance organization must be held in confidence and may not be disclosed to any person except:

(a) to the extent that it may be necessary to carry out the purposes of this chapter;

(b) upon the express consent of the enrollee or applicant;

(c) pursuant to statute or court order for the production of evidence or the discovery thereof; or

(d) in the event of claim or litigation between the enrollee or applicant and the health maintenance organization wherein the data or information is pertinent.

(2) A health maintenance organization is entitled to claim the same statutory privileges against disclosure that the provider who furnished the information to the health maintenance organization is entitled to claim.

History: En. Sec. 26, Ch. 457, L. 1987.

33-31-114. Coverage for adopted children from time of placement — preexisting conditions. (1) Each health maintenance contract regulated under this chapter must provide coverage for an adopted child of the enrollee to the same extent as for natural children of the enrollee.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

History: En. Sec. 3, Ch. 387, L. 1991.

Part 2

Authorization of Health Maintenance Organizations

33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States (if a foreign person);

(iii) the date of organization or incorporation;

(iv) the form of organization (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his successors in office, and his authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); however, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract;

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

History: En. Sec. 3, Ch. 457, L. 1987; amd. Sec. 192, Ch. 368, L. 1991; amd. Sec. 3, Ch. 437, L. 1991.

33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after he receives the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may in his discretion consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information as the commissioner may reasonably require.

(d) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may in his discretion deny a certificate of authority only if he complies with the requirements of 33-31-404.

History: En. Sec. 4, Ch. 457, L. 1987; amd. Sec. 4, Ch. 437, L. 1991.

33-31-203. Powers of insurers and health service corporations. (1) An insurer authorized to transact insurance in this state or a health service corporation authorized to do business in this state may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this section, two or more insurers, health service corporations, or subsidiaries or affiliates thereof may jointly organize and operate a health maintenance organization. The business of insurance is considered to include the provision of health care services by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through a health maintenance organization and to provide coverage if the health maintenance organization fails to meet its obligations.

(3) The enrollees of a health maintenance organization constitute a permissible group under this title. The insurer or health service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers under the contracts described in subsection (2).

(4) Nothing in this section exempts a health maintenance organization that provides health care services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

History: En. Sec. 16, Ch. 457, L. 1987.

33-31-204. Acquisition, control, or merger of a health maintenance organization. (1) Except as provided in 33-2-1106 and subsection (2), no person may tender for, request, or invite tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization.

(2) No person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the acquiring person has filed with the commissioner and has sent to the health maintenance organization information required by 33-2-1104(2) and the commissioner has approved the offer, request, invitation, agreement, or acquisition pursuant to 33-2-1105.

History: En. Sec. 28, Ch. 457, L. 1987.

33-31-205 through 33-31-210 reserved.

33-31-211. Annual statement — revocation for failure to file — penalty for false swearing. (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may in his discretion waive any verification under oath.

(2) At the time of filing its annual statement, the health maintenance organization shall pay the commissioner the fee for filing its statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, or may in his discretion suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 per violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement which is false.

(4) The commissioner may require such reports as he considers reasonably necessary and appropriate to enable him to carry out his duties under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan.

History: En. Sec. 9, Ch. 457, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-31-212. Fees. (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees, miscellaneous charges, fines, penalties, and those amounts received pursuant to 33-31-211(3) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted thereunder must be deposited in the general fund.

History: En. Sec. 22, Ch. 457, L. 1987; amd. Sec. 8, Ch. 351, L. 1989; amd. Sec. 6, Ch. 628, L. 1989; amd. Sec. 5, Ch. 437, L. 1991.

33-31-213 and 33-31-214 reserved.

33-31-215. Investment regulations. Except for a health maintenance organization operated as a plan by a health service corporation, a domestic health maintenance organization may invest its funds only as prescribed in Title 33, chapter 2, part 8.

History: En. Sec. 12, Ch. 457, L. 1987.

33-31-216. Protection against insolvency. (1) Except as provided in subsections (4) through (7), each authorized health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner in the amount set forth in this section.

(2) The amount of the deposit for a health maintenance organization during the first year of its operation must be the greater of:

(a) 5% of its estimated expenditures for health care services for its first year of operation;

(b) twice its estimated average monthly uncovered expenditures for its first year of operation; or

(c) $100,000.

(3) At the beginning of each succeeding year, unless not applicable, the health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner, in an amount equal to 4% of its estimated annual uncovered expenditures for that year.

(4) Unless not applicable, a health maintenance organization that is in operation on October 1, 1987, shall make a deposit equal to the greater of:

(a) 1% of the preceding 12 months' uncovered expenditures; or

(b) $100,000 on the first day of the fiscal year beginning 6 months or more after October 1, 1987. In the second fiscal year, if applicable, the amount of the additional deposit must be equal to 2% of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit must be equal to 3% of its estimated annual uncovered expenditures for that year. In the fourth fiscal year and subsequent years, if applicable, the additional deposit must be equal to 4% of its estimated annual uncovered expenditures for each year. Each year's estimate after the first year of operation must reasonably reflect the preceding year's operating experience and delivery arrangements.

(5) The commissioner may in his discretion waive any of the deposit requirements set forth in subsections (1) through (4) whenever he is satisfied that:

(a) the health maintenance organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year;

(b) the health maintenance organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or

(c) the health maintenance organization's assets or its contracts with insurers, health service corporations, governments, or other organizations are reasonably sufficient to assure the performance of its obligations.

(6) When a health maintenance organization achieves a net worth not including land, buildings, and equipment of at least $1 million or achieves a net worth including organization-related land, buildings, and equipment of at least $5 million the annual deposit requirement under subsection (3) does not apply. The annual deposit requirement under subsection (3) does not apply to a health maintenance organization if the total amount of the accumulated deposit is greater than the capital requirement for the formation or admittance of a disability insurer in this state. If the health maintenance organization has a guaranteeing organization that has been in operation for at least 5 years and has a net worth not including land, buildings, and equipment of at least $1 million or that has been in operation for at least 10 years and has a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under

subsection (3) does not apply. If the guaranteeing organization is sponsoring more than one health maintenance organization, however, the net worth requirement is increased by a multiple equal to the number of such health maintenance organizations. This requirement to maintain a deposit in excess of the deposit required of a disability insurer does not apply during any time that the guaranteeing organization maintains for each health maintenance organization it sponsors a net worth at least equal to the capital and surplus requirements for a disability insurer.

(7) All income from deposits belongs to the depositing health maintenance organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw the deposit or any part of it after making a substitute deposit of cash, securities, or any combination of cash or securities of equal amount and value. A health maintenance organization may not substitute securities without prior approval by the commissioner.

(8) In any year in which an annual deposit is not required of a health maintenance organization, at the health maintenance organization's request, the commissioner shall reduce the previously accumulated deposit by $100,000 for each $250,000 of net worth in excess of the amount that allows the health maintenance organization to be exempt from the annual deposit requirement. If the amount of net worth no longer supports a reduction of its required deposit, the health maintenance organization shall immediately redeposit $100,000 for each $250,000 of reduction in net worth, except that its total deposit may not be required to exceed the maximum required under this section.

(9) Unless it is operated by an insurer or a health service corporation as a plan, each health maintenance organization shall have a minimum capital of at least $200,000 in addition to any deposit requirements under this section. The capital account must be in excess of any accrued liabilities and be in the form of cash, securities, or any combination of cash or securities acceptable to the commissioner.

(10) Each health maintenance organization shall demonstrate that if it becomes insolvent:

(a) enrollees hospitalized on the date of insolvency will be covered until discharged; and

(b) enrollees will be entitled to similar alternate insurance coverage that does not contain any medical underwriting or preexisting limitation requirements.

History: En. Sec. 13, Ch. 457, L. 1987.

33-31-217 through 33-31-220 reserved.

33-31-221. Powers of health maintenance organizations. (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in his opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

(3) Nothing in this section exempts the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

History: En. Sec. 5, Ch. 457, L. 1987.

33-31-222. Governing body. (1) The governing body of a health maintenance organization may include providers or other individuals, or both.

(2) The governing body shall establish a mechanism to give the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

History: En. Sec. 6, Ch. 457, L. 1987.

33-31-223. Fiduciary responsibilities. (1) Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the health maintenance organization is responsible for the funds in the manner of a fiduciary to the health maintenance organization.

(2) A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than $100,000 or such other sum as may be prescribed by the commissioner. Each bond must be

written with at least a 1-year discovery period and, if written with less than a 3-year discovery period, must contain a provision that a cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, may not take effect prior to the expiration of 90 days after written notice of the cancellation or termination has been filed with the commissioner unless the commissioner approves an earlier cancellation or termination date.

History: En. Sec. 7, Ch. 457, L. 1987.

Part 3

Operations

33-31-301. Evidence of coverage — schedule of charges for health care services. (1) Every enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider, if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area;

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or his dependents;

(f) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for such treatment and referral services, the enrollee's designated provider must limit his treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(g) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is hereby amended to conform to the minimum requirements of those statutes."

(h) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, his dependents, or family members continuing coverage on the enrollee, his dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, his dependents, or family members covered under the evidence of coverage ceases because of termination of employment or of his membership in the class or classes eligible for coverage under the policy or because his employer discontinues his business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(i) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or his dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee must not be individually determined based on the status of his health.

(7) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, he shall notify the filer. In the notice, the commissioner shall specify the reasons for his disapproval. The commissioner shall grant a hearing within 30 days after he receives a written request by the filer.

(8) The commissioner may in his discretion require a health maintenance organization to submit any relevant information he considers necessary in determining whether to approve or disapprove a filing made pursuant to this section.

History: **En. Sec. 8, Ch. 457, L. 1987.**

33-31-302. Information to enrollees. Each authorized health maintenance organization shall provide to its enrollees 30 days' advance notice in writing of any material change in the operation of the health maintenance organization that will affect them directly.

History: **En. Sec. 10, Ch. 457, L. 1987.**

33-31-303. Complaint system. (1) (a) Each authorized health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures to resolve written complaints initiated by enrollees. A health maintenance organization may not use a complaint system:

(i) before the commissioner approves it; and

(ii) unless the health maintenance organization describes it in each evidence of coverage issued or delivered to an enrollee in this state.

(b) Each time the health maintenance organization denies a claim or initiates disenrollment, cancellation, or nonrenewal, it shall notify the affected enrollee of the right to file a complaint and the procedure for filing a complaint.

(c) Each health maintenance organization shall acknowledge a complaint within 10 days of receiving it.

(d) Each health maintenance organization shall retain records of all complaints for 3 years and shall develop a summary for each year that must include:

(i) a description of the procedures of the complaint system;

(ii) the total number of complaints handled through the complaint system, a compilation of causes underlying the complaints filed, the date on which each complaint was filed, the date on which each complaint was resolved, the disposition of each complaint filed, the time it took to process each complaint, and a summary of each administrative change made because of a complaint; and

(iii) the number, amount, and disposition of malpractice claims made by enrollees of the health maintenance organization that were settled during the year by the health maintenance organization.

(e) The health maintenance organization shall annually on or before March 1 file with the commissioner the summary described in subsection (1)(d) for the preceding year.

(2) The commissioner shall hold in confidence the information provided by the health maintenance organization pursuant to subsection (1)(d)(iii).

(3) The commissioner may examine a complaint system.

History: **En. Sec. 11, Ch. 457, L. 1987.**

33-31-304. Dual choice. An employer in this state that offers its employees the option to enroll in a health maintenance organization and an employee benefit fund in this state that offers its members the option to enroll in a health maintenance organization may not be required to pay more for health benefits provided by the health maintenance organization than it would otherwise be required to provide by any prevailing collective bargaining agreement or other contract for the provision of health benefits to its employees, if the employer or benefits fund pays to the health maintenance organization chosen by each employee or member an amount equal to the lesser of:

(1) the amount paid on behalf of its other employees or members of health benefits; or

(2) the health maintenance organization's charge for coverage approved by the commissioner pursuant to 33-31-301.

History: En. Sec. 29, Ch. 457, L. 1987.

33-31-305. Dentist participation as provider. A contract for dental care services through a health maintenance organization that is offered, delivered, or renewed under this chapter must allow a dentist to request participation as a provider on the same terms and conditions as those by which other dentists participate. This opportunity for participation must be offered for each contract or plan. Each contract or plan must provide at least one annual period during which a dentist may exercise this right.

History: En. Sec. 2, Ch. 265, L. 1989.

Cross-References

Disability insurance — freedom of choice of practitioners, 33-22-111.

Preferred provider agreements — dental services, 33-22-1706.

33-31-306 through 33-31-310 reserved.

33-31-311. Insurance producer license required — application, issuance, renewal, fees — penalty. (1) No individual, partnership, or corporation may act as or hold himself out to be an insurance producer of a health maintenance organization unless he is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer under 33-30-311 through 33-30-313; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation who holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license, or impose a fine upon the licensee.

History: En. Sec. 15, Ch. 457, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-31-312. Prohibited practices. (1) A health maintenance organization, or representative thereof, may not cause or knowingly permit the use of advertising that is untrue or misleading, solicitation that is untrue or misleading, or any form of evidence of coverage that is deceptive. For purposes of this chapter:

(a) a statement or item of information is considered to be misleading, whether or not it may be literally untrue, if, in the total context in which the statement is made or the item of information is communicated, a reasonable person not possessing special knowledge regarding health care coverage may reasonably understand the statement or item of information as indicating a benefit or advantage or the absence of an exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in a health maintenance organization if the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist; and

(b) an evidence of coverage is considered to be deceptive if, when taken as a whole and with consideration given to typography, format, and language, it can cause a reasonable person not possessing special knowledge regarding health maintenance organizations to expect benefits, services, charges, or other advantages that the evidence of coverage does not provide or which the health maintenance organization issuing the evidence of coverage does not regularly make available to enrollees covered under the evidence of coverage.

(2) Title 33, chapter 18, applies to health maintenance organizations and evidences of coverage issued by a health maintenance organization, except to the extent that the commissioner determines that the nature of health maintenance organizations and evidences of coverage render the chapter clearly inappropriate.

(3) A health maintenance organization shall clearly disclose in the evidence of coverage the circumstances under which it may disenroll, cancel, or refuse to renew an enrollee. A health maintenance organization may disenroll, cancel, or refuse to renew an enrollee only if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;

(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the health maintenance organization;

(c) has allowed a nonenrollee to use the health maintenance organization's certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the health maintenance organization;

(e) has violated rules of the health maintenance organization stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner for enrollment in a health maintenance organization; or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the health maintenance organization can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that he may file a grievance on this matter.

(4) A health maintenance organization may not disenroll an enrollee under subsection (3) for reasons related to the physical or mental condition of the enrollee or for any of the following reasons:

(a) failure of the enrollee to follow a prescribed course of treatment; or

(b) administrative actions, such as failure to keep an appointment.

(5) (a) A health maintenance organization that disenrolls a group certificate holder for any reason not listed in subsection (3) or provided in rules adopted by the commissioner shall make arrangements to provide similar alternate insurance coverage to enrollees. The insurance coverage must be continued until the disenrolled group certificate holder finds its own coverage or a period of 12 months elapses, whichever comes first. The premium on the individual coverage must be at the then-customary rate applicable to the individual coverage offered by the insurer, health service corporation, or health maintenance organization that provides the alternate insurance coverage.

(b) If a health maintenance organization disenrolls an enrollee covered on an individual basis for any reason not listed in subsection (3) or provided in rules adopted by the commissioner, coverage must be continued until the anniversary date of the policy or for 1 year, whichever is earlier. A health maintenance organization that disenrolls an individual enrollee for failure to pay a required premium or for fraudulent statements on the enrollment form need not provide alternate insurance coverage to that enrollee.

(6) A health maintenance organization may not refer to itself as an insurer unless licensed as an insurer or use a name deceptively similar to the name or description of an insurer authorized to transact insurance in this state.

(7) A person may not refer to itself as a health maintenance organization or HMO unless it holds a valid certificate of authority issued by the commissioner.

History: En. Sec. 14, Ch. 457, L. 1987.

Part 4

Supervision, Rehabilitation, and Liquidation

33-31-401. Examination. (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years.

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on

account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount so paid must be a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state.

History: En. Sec. 17, Ch. 457, L. 1987; amd. Sec. 7, Ch. 628, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 6, Ch. 437, L. 1991.

33-31-402. Suspension or revocation of certificate of authority. (1) The commissioner may in his discretion suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under 33-31-201 and provided that such operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to such submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of 33-31-301.

(c) The health maintenance organization does not provide or arrange for basic health care services.

(d) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(e) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under 33-31-222.

(f) The health maintenance organization has failed to implement the complaint system required by 33-31-303 to resolve valid complaints in a reasonable manner.

(g) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(h) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(i) The health maintenance organization has otherwise failed to substantially comply with this chapter.

(2) The commissioner may in his discretion suspend or revoke a certificate of authority only if he complies with the requirements of 33-31-404.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of such suspension, enroll any additional enrollees except newborn infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if he finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

History: En. Sec. 18, Ch. 457, L. 1987; amd. Sec. 7, Ch. 437, L. 1991.

33-31-403. Supervision, rehabilitation, or liquidation of a health maintenance organization. (1) The supervision, rehabilitation, or liquidation of a health maintenance organization is considered to be the supervision, rehabilitation, or liquidation of an insurer and must be conducted under the supervision of the commissioner pursuant to chapter 2, part 13. The commissioner may apply for an order directing him to supervise, rehabilitate, or liquidate a health maintenance organization upon any one or more grounds set out in 33-2-1321, 33-2-1331, or 33-2-1341 or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) A claim by a health care provider for an uncovered expenditure has the same priority as a claim by an enrollee if the provider of services agrees not to assert the claim against any enrollee of the health maintenance organization.

History: En. Sec. 19, Ch. 457, L. 1987.

33-31-404. Administrative procedures. (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, he shall give written notice to the health maintenance organization specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall make written findings and act as he considers advisable. The commissioner shall mail the written findings to the health maintenance organization. The action of the

commissioner is subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) Where notice and hearing are required with regard to actions taken by the commissioner under this chapter, the requirements of 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply.

History: En. Sec. 21, Ch. 457, L. 1987; amd. Sec. 8, Ch. 437, L. 1991.

33-31-405. Penalties and enforcement. (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under 33-31-402, after notice and hearing, impose an administrative penalty in an amount not less than $500 or more than $10,000 if he gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner has cause to believe that a violation of this chapter has occurred or is threatened, the commissioner may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of this chapter.

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of this chapter have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of this chapter and the commissioner elects not to issue a cease and desist order or if the respondent does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County.

History: En. Sec. 23, Ch. 457, L. 1987; amd. Sec. 9, Ch. 437, L. 1991.

CHAPTER 32

HEALTH UTILIZATION REVIEW

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33-32-101. Purpose.
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33-32-104. Preemption by federal law.
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33-32-201. Conduct of utilization review.
33-32-202. Commissioner not to approve or disapprove plans.
33-32-203. Appeal and assignment of claim.
33-32-204. Commissioner to adopt rules.

Part 1

General Provisions

33-32-101. Purpose. The legislature finds and declares that it is the purpose of this chapter to:

(1) promote the delivery of quality health care in a cost-effective manner;

(2) foster greater coordination between health care providers, third-party payors, and others who conduct utilization review activities;

(3) ensure access to health care services; and

(4) protect patients, employers, and health care providers by ensuring that utilization review activities result in informed decisions on the appropriateness of medical care made by those best qualified to be involved in the utilization review process.

History: En. Sec. 1, Ch. 665, L. 1991.

33-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, certified chemical dependency counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and scope of employment.

(3) "Health care services" means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies.

(4) "Utilization review" means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be utilized directly or indirectly in order to determine whether the health care services will be paid, covered, or provided. Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness.

History: **En. Sec. 2, Ch. 665, L. 1991.**

33-32-103. Utilization review plan. A person may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that person, at all times, maintains with the commissioner a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the medicaid program provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;

(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review;

(4) policies and procedures to ensure that a representative of the person conducting the utilization review is reasonably accessible to patients and health care providers at all times;

(5) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;

(6) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and

(7) any other information as may be required by the commissioner that is necessary to implement this chapter.

History: **En. Sec. 3, Ch. 665, L. 1991; amd. Sec. 5, Ch. 561, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 561 in (1)(b), before "medicaid", deleted "general relief medical assistance or"; and made minor changes in style. Amendment effective July 1, 1993.

33-32-104. Preemption by federal law. If any provision of this chapter is preempted or duplicated by federal law or regulations as applied to any specific health care service, then the provision of this chapter that is preempted or duplicated by federal law or regulations does not apply to that health care service but only to the extent of the preemption or duplication.

History: **En. Sec. 8, Ch. 665, L. 1991.**

33-32-105. Application — exemptions. (1) The provisions of this chapter apply to a person or entity performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of:

(a) a Montana business entity; or

(b) a third party that provides or administers health care benefits to citizens of this state, including:

(i) a health insurer, nonprofit health service plan, health service corporation, employees' health and welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;

(ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter 31; or

(iii) a state agency.

(2) A general in-house utilization review for a health care provider, including an in-house utilization review that is conducted by or for a long-term care facility and that is required by medicare or medicaid regulations, is exempt from the provisions of this chapter as long as the review does not directly result in the approval or denial of payment for health care services for a particular case.

(3) A peer review procedure conducted by a professional society or association of providers is exempt from the provisions of this chapter.

History: En. Sec. 9, Ch. 665, L. 1991.

Part 2
Utilization Review — Conduct

33-32-201. Conduct of utilization review. A program of utilization review with regard to health care services provided or to be provided in this state must comply with the following:

(1) The insurer, health maintenance organization, or their agents conducting the utilization review of outpatient mental health treatment may request only information that is relevant to the payment of the claim.

(2) When a utilization review requires disclosure of personal information regarding the patient or client, including personal and family history or current and past symptoms of a mental disorder, then the identity of that individual must be concealed from anyone having access to that information in order that the patient or client may remain anonymous.

(3) A determination that is made on appeal or reconsideration as provided in 33-32-203 and that is adverse to a patient or to an affected health care provider may not be made on a question relating to the necessity or appropriateness of a health care service without prior written findings, evaluation, and concurrence in the adverse determination by a health care professional trained in the relevant area of health care. Copies of the written findings, evaluation, and concurrence must be provided to the patient on request as provided in Title 33, chapter 19.

(4) A determination made on appeal or reconsideration, as provided in 33-32-203, that health care services rendered or to be rendered are medically inappropriate may not be made unless the health care professional performing the utilization review has made a reasonable attempt to consult with the

patient's attending health care provider concerning the necessity or appropriateness of the health care service.

(5) The following provisions must govern the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, licensed psychiatric nurse, licensed psychiatrist, or a licensed psychologist:

(a) If a review of the patient's or the health care provider's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of the provider.

(b) During an appeal or redetermination, the patient may, at the patient's expense, request an independent review of the patient's or the provider's records by a health care provider licensed in the field of the provider that rendered the health care service and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

History: En. Sec. 4, Ch. 665, L. 1991; amd. Sec. 1, Ch. 378, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 378 inserted (1) allowing insurers and health maintenance organizations conducting utilization reviews of outpatient mental health treatment to request only information relevant to payment of the claim; inserted (2) requiring the identity of an individual to be concealed from anyone having access to the utilization review when the review requires disclosure of personal information regarding the individual, including personal and family history or current and past symptoms of a mental disorder; inserted (5) governing the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, licensed psychiatric nurse, licensed psychiatrist, or licensed psychologist; and made minor changes in style.

33-32-202. Commissioner not to approve or disapprove plans. Nothing in this chapter may be construed as authorizing the commissioner to approve or disapprove a utilization review plan required in 33-32-103.

History: En. Sec. 5, Ch. 665, L. 1991.

33-32-203. Appeal and assignment of claim. (1) A patient or provider affected by an adverse decision has at least 30 days in which to appeal or seek reconsideration of the adverse decision by the person conducting the utilization review.

(2) A final decision on appeal or reconsideration must be made within 60 days of receipt of all relevant medical records by the person conducting the utilization review.

History: En. Sec. 6, Ch. 665, L. 1991.

33-32-204. Commissioner to adopt rules. The commissioner may adopt rules for the implementation of this chapter, including but not limited to rules providing for:

(1) information to be included in the utilization review plan required in 33-32-103;

(2) utilization review criteria, standards, and procedures; and

(3) the protection of the confidentiality of medical records used in the course of utilization reviews.

History: En. Sec. 7, Ch. 665, L. 1991.

TITLE 34

RESERVED

TITLE 35

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

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CHAPTER 1

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Part 1

General

Part Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

35-1-101. Renumbered 35-1-112. Sec. 221, Ch. 368, L. 1991.

35-1-102 through 35-1-108. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-102. En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202; amd. Sec. 1, Ch. 475, L. 1981; amd. Sec. 2, Ch. 273, L. 1989.

35-1-103. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-104. En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.

35-1-105. En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.

35-1-106. En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.

35-1-107. En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.

35-1-108. En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204; amd. Sec. 2, Ch. 475, L. 1981.

35-1-109. Renumbered 35-1-119. Sec. 221, Ch. 368, L. 1991.

35-1-110. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

35-1-111. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

35-1-112. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201; Sec. 35-1-101, MCA 1989; redes. 35-1-112 by Sec. 221, Ch. 368, L. 1991.

35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(5) "Deliver" includes mail.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(7) "Effective date of notice" means the date determined as provided in 35-1-116.

(8) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(9) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes an authority, county, district, and city or town.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" means notice as provided in 35-1-116.

(16) "Person" includes an individual and an entity.

(17) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(19) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(21) "Share" means the unit into which the proprietary interests in a corporation are divided.

(22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(23) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(26) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

History: En. Sec. 1, Ch. 368, L. 1991.

35-1-114. Purposes. (1) Each corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation organized under another statute of this state may incorporate under this chapter only if the incorporation is permitted by and subject to all limitations of the other statute.

(3) Subject to the limitation in subsection (2), corporations may be organized under this chapter for any lawful purpose or purposes except for the purpose of banking or insurance.

History: En. Sec. 22, Ch. 368, L. 1991.

Cross-References

Banks — formation and reorganization, Title 32, ch. 1, part 3.

Certificate of authority for insurance transactions, 33-2-101.

35-1-115. General powers. Unless its articles of incorporation provide otherwise, each corporation has perpetual duration and succession in its corporate name and, unless otherwise prohibited by law, has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in, or obligations of any other entity;

(7) to make contracts and guarantees; to incur liabilities; to borrow money; to issue its notes, bonds, and other obligations, which, if authorized by the articles of incorporation, may be convertible into or include the option to purchase other securities of the corporation; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(11) to elect directors and appoint officers, employees, and agents of the corporation; to define their duties; to fix their compensation; and to lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, to make donations in aid of war activities;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or to do any other act that is consistent with law and that furthers the business and affairs of the corporation.

History: En. Sec. 23, Ch. 368, L. 1991; amd. Sec. 1, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 249 in (7), after "which", inserted "if authorized by the articles of incorporation".

35-1-116. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state, may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: En. Sec. 2, Ch. 368, L. 1991.

35-1-117. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act; or

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may:

(a) enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding; and

(b) award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

History: En. Sec. 24, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Involuntary dissolution by Secretary of State, Title 35, ch. 6, part 1.

Reinstatement, Title 35, ch. 6, part 2.

35-1-118. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: En. Sec. 3, Ch. 368, L. 1991.

35-1-119. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135; amd. Sec. 3, Ch. 475, L. 1981; Sec. 35-1-109, MCA 1989; redes. 35-1-119 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-1-201 through 35-1-214. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-201. En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247; amd. Sec. 11, Ch. 131, L. 1983; amd. Sec. 9, Ch. 174, L. 1983.

35-1-202. En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248; amd. Sec. 6, Ch. 475, L. 1981; amd. Sec. 1, Ch. 559, L. 1987.

35-1-203. En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249; amd. Sec. 12, Ch. 131, L. 1983.

35-1-204. En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252; amd. Sec. 7, Ch. 475, L. 1981.

35-1-207. En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253; amd. Sec. 8, Ch. 475, L. 1981.

35-1-208. En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254; amd. Sec. 9, Ch. 475, L. 1981.

35-1-209. En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255; amd. Sec. 10, Ch. 475, L. 1981; amd. Sec. 13, Ch. 131, L. 1983; amd. Sec. 10, Ch. 174, L. 1983.

35-1-210. En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256; amd. Sec. 14, Ch. 131, L. 1983.

35-1-211. En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257; amd. Sec. 11, Ch. 475, L. 1981.

35-1-212. En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259; amd. Sec. 12, Ch. 475, L. 1981; amd. Sec. 15, Ch. 131, L. 1983; amd. Sec. 11, Ch. 174, L. 1983.

35-1-213. En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part); amd. Sec. 13, Ch. 475, L. 1981; amd. Sec. 16, Ch. 131, L. 1983; amd. Sec. 12, Ch. 174, L. 1983; amd. Sec. 1, Ch. 456, L. 1983; amd. Sec. 1, Ch. 445, L. 1985.

35-1-214. En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

35-1-215. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 16, Ch. 368, L. 1991.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Secretary of State to establish filing fees for articles of incorporation, 35-1-1206.

35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.

History: **En. Sec. 17, Ch. 368, L. 1991.**

35-1-217. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under 35-1-1308.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in 35-1-315 and 35-1-1036;

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 368, L. 1991.

Cross-References

Articles of dissolution, 35-1-933.

Filing fees, 35-1-1206.

Articles of incorporation for cooperative agricultural marketing associations — contents — filing — articles or copies as prima facie evidence, 35-17-202.

Amendments to articles of incorporation — cooperative agricultural marketing associations, 35-17-203.

35-1-218. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 368, L. 1991.

35-1-219. Effective time and date of document. (1) Except as provided in 35-1-221 and subsection (2) of this section, a document accepted for filing is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 9, Ch. 368, L. 1991.

35-1-220. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 18, Ch. 368, L. 1991.

35-1-221. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by:

(a) preparing articles of correction that:

(i) describe the document including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) delivering the articles to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 10, Ch. 368, L. 1991.

35-1-222. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state.

History: En. Sec. 19, Ch. 368, L. 1991.

35-1-223 and 35-1-224 reserved.

35-1-225. Authority to amend. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

History: En. Sec. 112, Ch. 368, L. 1991.

Cross-References

Shareholders' preemptive rights, 35-1-535.

License fees based on number of shares authorized in articles, 35-1-1207.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-226. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the names and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholders' action.

History: En. Sec. 113, Ch. 368, L. 1991.

35-1-227. Amendment by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) the board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) the shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice of meeting must also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) the votes required by 35-1-528 and 35-1-529 by every other voting group entitled to vote on the amendment.

History: En. Sec. 114, Ch. 368, L. 1991.

35-1-228. Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(a) increase or decrease the aggregate number of authorized shares of the class;

(b) cause an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) cause an exchange or reclassification of or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) change the shares of all or part of the class into a different number of shares of the same class;

(f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolution or to distributions that are prior, superior, or substantially equal to the shares of the class;

(h) limit or deny an existing preemptive right of all or part of the share of the class; or

(i) cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to be voted as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to be voted as separate voting groups under this section would affect those two

or more series in the same or a substantially similar way, the shareholders of all the series affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

History: En. Sec. 115, Ch. 368, L. 1991.

Cross-References

Voting entitlement of shares, 35-1-524.

Voting on merger or share exchange, 35-1-815.

Voting on sale of assets, 35-1-823.

Voting on voluntary dissolution, 35-1-932.

35-1-229. Amendment before issuance of shares. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

History: En. Sec. 116, Ch. 368, L. 1991.

35-1-230. Articles of amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholders' action, a statement to that effect and that shareholders' action was not required; and

(6) if an amendment was approved by the shareholders:

(a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group that was sufficient for approval by that voting group.

History: En. Sec. 117, Ch. 368, L. 1991.

Cross-References

Amendment filing fees, 35-1-1206.

License fees based on number of shares authorized in articles, 35-1-1207.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-231. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholders' action.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholders' approval, it must be adopted as provided in 35-1-227.

(3) If the board of directors submits a restatement for shareholders' action, the corporation shall notify each shareholder, whether or not entitled

to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change the restatement would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring shareholders' approval, the information required by 35-1-230.

(5) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4).

History: En. Sec. 118, Ch. 368, L. 1991.

Cross-References

Articles of incorporation, 35-1-216.
Filing fees, 35-1-1206.
Certificate of existence or authorization, 35-1-1312.

35-1-232. Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation, after amendment, contain only provisions required or permitted by 35-1-216.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: En. Sec. 119, Ch. 368, L. 1991.

35-1-233. Effect of amendment. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: **En. Sec. 120, Ch. 368, L. 1991.**

35-1-234. Amendment by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(b) the shareholders in amending, adding, or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

History: **En. Sec. 121, Ch. 368, L. 1991.**

35-1-235. Extension of duration of corporation. If a corporation is dissolved by the expiration of its period of duration as stated in its articles of incorporation, the corporation may amend its articles of incorporation within 5 years from the stated date of expiration to extend its existence.

History: **En. Sec. 8, Ch. 249, L. 1993.**

35-1-236. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is consistent with law or the articles of incorporation.

History: **En. Sec. 20, Ch. 368, L. 1991.**

35-1-237. Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: En. Sec. 21, Ch. 368, L. 1991.

35-1-238. Bylaw increasing quorum or voting requirement for shareholders. (1) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) may not be adopted, amended, or repealed by the board of directors.

History: En. Sec. 122, Ch. 368, L. 1991.

35-1-239. Bylaw increasing quorum or voting requirement for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders; or

(b) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

History: En. Sec. 123, Ch. 368, L. 1991.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

35-1-301 through 35-1-307. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-301. En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981; amd. Sec. 2, Ch. 456, L. 1983.

35-1-302. En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.

35-1-303. En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209; amd. Sec. 3, Ch. 456, L. 1983; amd. Sec. 2, Ch. 445, L. 1985.

35-1-304. En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210; amd. Sec. 3, Ch. 445, L. 1985.

35-1-305. En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.

35-1-306. En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212; amd. Sec. 17, Ch. 131, L. 1983; amd. Sec. 13, Ch. 174, L. 1983.

35-1-307. En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.

35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names.

History: En. Sec. 25, Ch. 368, L. 1991; amd. Sec. 83, Ch. 120, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 120 in (2)(f) inserted reference to limited liability company name.

Cross-References

Exclusivity of assumed business names, 30-13-202.

Trademarks and service marks, Title 30, ch. 13, part 3.

Name of foreign corporation, 35-1-1031.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Limited partnership name, 35-12-505.

35-1-309. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: En. Sec. 26, Ch. 368, L. 1991.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-1-310. Contest of registration of name. (1) A person doing business in this state may contest the subsequent registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a $100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

(a) the strength or unique nature of the names;

(b) the similarity of sound, appearance, or meaning of the names;

(c) the intent of the parties;

(d) the type of businesses engaged in or to be engaged in by the parties;

(e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;

(f) the nature and quality of goods or services provided by the parties;

(g) the level of sophistication of potential purchasers of goods or services offered by the parties;

(h) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(i) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

History: En. Sec. 181, Ch. 368, L. 1991.

Cross-References

Term and renewal of assumed business name registration, 30-13-206.

Filing fees, 35-1-1206.

35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incor-

porated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: **En. Sec. 27, Ch. 368, L. 1991.**

35-1-312 reserved.

35-1-313. Registered office — registered agent. Each corporation shall continuously maintain in this state:

(1) a registered office that may but need not be the same as any of its places of business; and

(2) a registered agent, who must be one of the following:

(a) an individual who resides in this state and whose business office is identical to the registered office;

(b) a domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

(c) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical to the registered office.

History: **En. Sec. 28, Ch. 368, L. 1991.**

Cross-References

Agency, Title 28, ch. 10.

Agent to be named in articles of incorporation, 35-1-216.

Agent for foreign corporation, 35-1-1032.

35-1-314. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change.

History: **En. Sec. 29, Ch. 368, L. 1991.**

35-1-315. Resignation of registered agent. (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the signed original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 30, Ch. 368, L. 1991.

35-1-316. Service of process on corporation. (1) Service of process on a corporation must be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its shareholders, for the purpose of service or demand, on a corporation dissolved pursuant to Title 35, chapter 6, or this chapter:

(a) in the case of a voluntary dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term, any one of those persons designated as receiver or trustee by a court of competent jurisdiction or any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

History: En. Sec. 31, Ch. 368, L. 1991.

Cross-References

Personal service on corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process on foreign corporations, 35-1-1034.

35-1-317. Demand on or notice to corporation. (1) This section applies when the law requires or permits a demand on or notice to a corporation. However, the law does not require that the demand or notice be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

History: En. Sec. 32, Ch. 368, L. 1991.

Part 4
Directors and Officers

Part Cross-References

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Montana Close Corporation Act, Title 35, ch. 9.

Elimination of Board of Directors, 35-9-302.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-1-401 through 35-1-411. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-401. En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233; amd. Sec. 16, Ch. 475, L. 1981.

35-1-402. En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234; amd. Sec. 17, Ch. 475, L. 1981.

35-1-403. En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.

35-1-404. En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239; amd. Sec. 18, Ch. 475, L. 1981.

35-1-405. En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.

35-1-406. En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 19, Ch. 475, L. 1981.

35-1-407. En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238; amd. Sec. 20, Ch. 475, L. 1981.

35-1-408. En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236; amd. Sec. 21, Ch. 475, L. 1981.

35-1-409. En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242; amd. Sec. 22, Ch. 475, L. 1981.

35-1-410. En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.

35-1-411. En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.

35-1-412. Renumbered 35-1-428. Sec. 221, Ch. 368, L. 1991.

35-1-413. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 23, Ch. 475, L. 1981.

35-1-414. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 4, Ch. 475, L. 1981.

35-1-415. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 5, Ch. 475, L. 1981.

35-1-416. Requirement for and duties of board of directors. (1) Each corporation must have a board of directors.

(2) Subject to any limitation set forth in the articles of incorporation, all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed under the direction of its board of directors.

History: En. Sec. 75, Ch. 368, L. 1991.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

35-1-417. Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless required by the articles of incorporation or bylaws.

History: En. Sec. 76, Ch. 368, L. 1991.

35-1-418. General standards for directors. (1) A director shall discharge his duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if he performed the duties of the director's office in compliance with this section.

History: En. Sec. 92, Ch. 368, L. 1991.

35-1-419. Number and election of directors. (1) A board of directors consists of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30% or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30% the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum limits, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under 35-1-422.

History: En. Sec. 77, Ch. 368, L. 1991.

35-1-420. Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

History: **En. Sec. 78, Ch. 368, L. 1991.**

35-1-421. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under 35-1-422.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of his predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors.

History: **En. Sec. 79, Ch. 368, L. 1991.**

35-1-422. Staggered terms for directors. If there are nine or more directors, the articles of incorporation or bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing as near as possible to one-half or one-third of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

History: **En. Sec. 80, Ch. 368, L. 1991.**

35-1-423. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date.

History: **En. Sec. 81, Ch. 368, L. 1991.**

35-1-424. Removal of directors. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be

sufficient to elect him if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

History: En. Sec. 82, Ch. 368, L. 1991.

35-1-425. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office or, if the office is not located in this state, the county where its registered office is located may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant.

History: En. Sec. 83, Ch. 368, L. 1991.

35-1-426. Vacancy on board. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the members of the board of directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-1-423 or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 84, Ch. 368, L. 1991.

35-1-427. Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: En. Sec. 85, Ch. 368, L. 1991.

35-1-428. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter.

History: En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126; amd. Sec. 14, Ch. 174, L. 1983; Sec. 35-1-412, MCA 1989; redes. 35-1-428 by Sec. 221, Ch. 368, L. 1991.

Cross-References

False swearing, 45-7-202.

35-1-429 and 35-1-430 reserved.

35-1-431. Meetings. (1) The board of directors may hold regular or special meetings in the state or out of the state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

History: En. Sec. 86, Ch. 368, L. 1991.

35-1-432. Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: En. Sec. 87, Ch. 368, L. 1991.

35-1-433. Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice is not required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History: En. Sec. 88, Ch. 368, L. 1991.

35-1-434. Waiver of notice. (1) A director may waive a notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon the director's arrival, objects to

holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

History: En. Sec. 89, Ch. 368, L. 1991.

35-1-435. Quorum — voting. (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

History: En. Sec. 90, Ch. 368, L. 1991.

35-1-436 through 35-1-438 reserved.

35-1-439. Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the articles of incorporation or bylaws to take action under 35-1-435.

(3) Sections 35-1-431 through 35-1-435, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under 35-1-416. However, a committee may not:

(a) authorize distributions;

(b) approve or propose to shareholders action that this chapter requires to be approved by shareholders;

(c) fill vacancies on the board of directors or on any of its committees;

(d) amend articles of incorporation;

(e) adopt, amend, or repeal bylaws;

(f) approve a plan of merger not requiring shareholder approval;

(g) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-1-418.

History: En. Sec. 91, Ch. 368, L. 1991.

Cross-References

Amendment of articles or bylaws, 35-1-230, 35-1-234.

35-1-440 reserved.

35-1-441. Required officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

History: En. Sec. 94, Ch. 368, L. 1991.

35-1-442. Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

History: En. Sec. 95, Ch. 368, L. 1991.

35-1-443. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of his office in compliance with this section.

History: En. Sec. 96, Ch. 368, L. 1991.

35-1-444. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) The board of directors may remove any officer with or without cause, and if authorized by the bylaws or by the board of directors, an officer may remove an officer or assistant officer appointed by that officer under 35-1-441 with or without cause.

History: En. Sec. 97, Ch. 368, L. 1991.

35-1-445. Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: En. Sec. 98, Ch. 368, L. 1991.

35-1-446 through 35-1-450 reserved.

35-1-451. Definitions. As used in 35-1-451 through 35-1-459, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request

if the director's duties to the corporation include duties or services by him to the plan or to participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-1-457, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 99, Ch. 368, L. 1991.

35-1-452. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because he is or was a director may be indemnified against liability incurred in the proceeding if:

(a) he conducted himself in good faith;

(b) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in the corporation's best interests; and

(ii) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 100, Ch. 368, L. 1991.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-1-453. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding.

History: En. Sec. 101, Ch. 368, L. 1991.

35-1-454. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-1-452;

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in 35-1-452; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-1-451 through 35-1-459.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-1-456.

History: En. Sec. 102, Ch. 368, L. 1991.

35-1-455. Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines that the director:

(1) is entitled to mandatory indemnification under 35-1-453, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-1-452 or was adjudged liable as described in 35-1-452(4). If the director was adjudged liable as described in 35-1-452(4), the director's indemnification is limited to reasonable expenses incurred.

History: En. Sec. 103, Ch. 368, L. 1991.

35-1-456. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-1-452 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-1-452.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

History: En. Sec. 104, Ch. 368, L. 1991.

35-1-457. Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-1-453 and is entitled to apply for court-ordered indemnification under 35-1-455 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-1-451 through 35-1-459 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 105, Ch. 368, L. 1991.

35-1-458. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under 35-1-452 or 35-1-453.

History: En. Sec. 106, Ch. 368, L. 1991.

35-1-459. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-1-451 through 35-1-459. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) Sections 35-1-451 through 35-1-459 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 107, Ch. 368, L. 1991.

35-1-460 reserved.

35-1-461. Definitions. As used in 35-1-461 through 35-1-464, the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

(c) an individual having the same residence as the director;

(d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or

(e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

(a) the existence and nature of his conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

History: En. Sec. 108, Ch. 368, L. 1991.

35-1-462. Judicial action. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation or any person with whom the director has a personal, economic, or other association has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director or any person with whom the director has a personal, economic, or other association has an interest in the transaction if:

(a) directors' action respecting the transaction was at any time taken in compliance with 35-1-463;

(b) shareholders' action respecting the transaction was at any time taken in compliance with 35-1-464; or

(c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

History: En. Sec. 109, Ch. 368, L. 1991.

35-1-463. Directors' action. (1) Directors' action respecting a transaction is effective for purposes of 35-1-462(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on an empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2). Action by a committee is effective only if all its members are qualified directors and its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction but neither the director nor a related person of the director specified in 35-1-461(3) is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person respecting information relating to the transaction such that the director may not make the disclosure described in 35-1-461(4)(b), disclosure is sufficient for purposes of subsection (1) if the director:

(a) discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

History: En. Sec. 110, Ch. 368, L. 1991.

35-1-464. Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of 35-1-462(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) notice to shareholders describing the director's conflicting interest transaction;

(b) provision of the information referred to in subsection (3); and

(c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders'

action that otherwise complies with this section is not affected by the presence of shareholders, or the voting, of shares that are not qualified shares.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director to comply with subsection (3) and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting 35-1-462(2)(c), take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

History: En. Sec. 111, Ch. 368, L. 1991.

Part 5

Shareholders

35-1-501 through 35-1-515. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-501. En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226; amd. Sec. 24, Ch. 475, L. 1981.

35-1-502. En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.

35-1-503. En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.

35-1-504. En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.

35-1-505. (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231; amd. Sec. 25, Ch. 475, L. 1981.

35-1-507. En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

35-1-508. En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232; amd. Sec. 26, Ch. 475, L. 1981.

35-1-509. En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 27, Ch. 475, L. 1981.

35-1-510. En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.

35-1-511. En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224; amd. Sec. 28, Ch. 475, L. 1981.

35-1-512. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-513. En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.

35-1-514. En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.

35-1-515. En. Sec. 29, Ch. 475, L. 1981.

35-1-516. Annual meeting. (1) A corporation shall hold an annual meeting of shareholders at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(4) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 49, Ch. 368, L. 1991.

35-1-517. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) on the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws; or

(b) if the holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose for which it is to be held.

(2) If the record date is not fixed or the manner of fixing the record date is not specified under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose described in the meeting notice required by 35-1-520 may be conducted at a special shareholders' meeting.

(5) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in a special meeting of the shareholders by means of a conference telephone or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 50, Ch. 368, L. 1991.

35-1-518. Court-ordered meeting. (1) The district court of the county where a corporation's principal office or, if its principal office is not located in this state, in the county where its registered office is located may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

History: En. Sec. 51, Ch. 368, L. 1991.

35-1-519. Action without meeting. (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

(4) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History: En. Sec. 52, Ch. 368, L. 1991.

35-1-520. Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than 10 or more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-1-522, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

History: En. Sec. 53, Ch. 368, L. 1991.

35-1-521. Waiver of notice. (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

History: En. Sec. 54, Ch. 368, L. 1991.

35-1-522. Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

History: En. Sec. 55, Ch. 368, L. 1991.

35-1-523. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the

corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the shareholder, the district court of the county where a corporation's principal office or, if the principal office is not located in this state, its registered office is located, may summarily order the inspection or copying at the corporation's expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

History: En. Sec. 56, Ch. 368, L. 1991.

35-1-524. Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

(5) Shares acquired by the corporation pursuant to 35-1-630 are not entitled to vote as long as they are owned by the corporation.

History: En. Sec. 57, Ch. 368, L. 1991.

Cross-References

Election of directors of railroad corporation, 69-14-501.

Montana Uniform Transfers to Minors Act — powers of custodian, 72-26-701.

35-1-525. Proxies. (1) A shareholder may vote its shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for that shareholder by signing an appointment form, either personally or by attorney-in-fact.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

(4) Except as provided in subsection (6), an appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under 35-1-533.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to 35-1-526 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value except as authorized in 35-1-532 and this section.

History: En. Sec. 58, Ch. 368, L. 1991.

35-1-526. Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) the type of nominee to which it applies;

(b) the rights or privileges that the corporation recognizes in a beneficial owner;

(c) the manner in which the procedure is selected by the nominee;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective; and

(f) other aspects of the rights and duties created.

History: En. Sec. 59, Ch. 368, L. 1991.

35-1-527. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: En. Sec. 60, Ch. 368, L. 1991.

35-1-528. Quorum and voting requirements for voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and

for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) is governed by 35-1-530.

(5) The election of directors is governed by 35-1-531.

History: En. Sec. 61, Ch. 368, L. 1991.

35-1-529. Action by single and multiple voting groups. (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in 35-1-527.

(2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in 35-1-528. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

History: En. Sec. 62, Ch. 368, L. 1991.

35-1-530. Greater quorum or voting requirements. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or for voting groups of shareholders than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

History: En. Sec. 63, Ch. 368, L. 1991.

35-1-531. Voting for directors — cumulative voting. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as limited by subsection (3), at each election for directors each shareholder entitled to vote at the election has the right:

(a) to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote; or

(b) to cumulate the shareholder's votes:

(i) by giving one candidate as many votes as the number of directors to be elected multiplied by the number of shareholders' shares; or

(ii) by distributing the votes on the same principle among any number of the candidates.

(3) The right of all shareholders to cumulate their shares provided by subsection (2) may be denied by a statement to that effect included in the articles of incorporation, but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation are filed; or

(b) the statement is included in an amendment to the articles of incorporation unless the number of votes sufficient to elect one director, if voted upon a cumulative basis, was voted against the amendment.

History: En. Sec. 64, Ch. 368, L. 1991.

35-1-532. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and by transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3).

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and the list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

(4) The counterpart of the voting trust agreement and the copy of the record deposited with the corporation is subject to the same right of examination by a shareholder of a corporation, in person or by agent or attorney, as are the books and records of the corporation, and the counterpart and the copy of the record are subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History: En. Sec. 65, Ch. 368, L. 1991.

35-1-533. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of 35-1-532.

(2) A voting agreement created under this section is specifically enforceable.

History: En. Sec. 66, Ch. 368, L. 1991.

35-1-534. Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in 35-1-623 or specified in the subscription agreement as provided in 35-1-622.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct.

History: En. Sec. 39, Ch. 368, L. 1991.

Cross-References

Liability of directors in certain cases, 35-1-418.

35-1-535. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to 35-1-630 upon the decision of the board of directors to convey them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation have no preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to 35-1-630 have no preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 46, Ch. 368, L. 1991.

35-1-536 through 35-1-540 reserved.

35-1-541. Definitions. As used in 35-1-541 through 35-1-548, the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in 35-1-548, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

History: En. Sec. 67, Ch. 368, L. 1991.

35-1-542. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

History: En. Sec. 68, Ch. 368, L. 1991.

35-1-543. Demand. A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

History: En. Sec. 69, Ch. 368, L. 1991.

35-1-544. Stay of proceedings. If the corporation begins an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period the court considers appropriate.

History: En. Sec. 70, Ch. 368, L. 1991.

35-1-545. Dismissal. (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is begun after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. If this is done, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: En. Sec. 71, Ch. 368, L. 1991.

35-1-546. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

History: En. Sec. 72, Ch. 368, L. 1991.

35-1-547. Payment of expenses. On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that:

(a) the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry; or

(b) the filing was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass, to cause unnecessary delay, or to cause a needless increase in the cost of litigation.

History: En. Sec. 73, Ch. 368, L. 1991.

35-1-548. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matters covered by 35-1-541 through 35-1-548 are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for 35-1-544, 35-1-546, and 35-1-547.

History: En. Sec. 74, Ch. 368, L. 1991.

35-1-549 reserved.

35-1-550. Number of shareholders. (1) For purposes of Title 35, chapter 9, the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; or

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of Title 35, chapter 9, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

History: En. Sec. 180, Ch. 368, L. 1991.

Part 6

Shares

Part Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-1-601 through 35-1-607. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-601. En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214; amd. Sec. 30, Ch. 475, L. 1981.

35-1-602. En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215; amd. Sec. 31, Ch. 475, L. 1981; amd. Sec. 18, Ch. 131, L. 1983; amd. Sec. 15, Ch. 174, L. 1983.

35-1-603. En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

35-1-605. En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217; amd. Sec. 32, Ch. 475, L. 1981.

35-1-606. En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 33, Ch. 475, L. 1981.

35-1-607. En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 34, Ch. 475, L. 1981.

35-1-608. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609 through 35-1-612. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-609. En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221; amd. Sec. 35, Ch. 475, L. 1981.

35-1-611. En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222; amd. Sec. 36, Ch. 475, L. 1981.

35-1-612. En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205; amd. Sec. 37, Ch. 475, L. 1981; amd. Sec. 19, Ch. 131, L. 1983; amd. Sec. 16, Ch. 174, L. 1983.

35-1-613 through 35-1-616. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-613. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-614. En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.

35-1-615. En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.

35-1-616. En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.

35-1-617. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 38, Ch. 475, L. 1981.

35-1-618. Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class, except to the extent otherwise permitted by 35-1-619.

(2) (a) The articles of incorporation must authorize:

(i) one or more classes of shares that together have unlimited voting rights; and

(ii) one or more classes of shares which may be the same class or classes as those with voting rights.

(b) The classes of shares listed in subsections (2)(a)(i) and (2)(a)(ii), taken together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by this chapter;

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; and

(d) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) is not exhaustive.

(5) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on terms and conditions that may be provided by resolutions of the board of directors.

History: En. Sec. 33, Ch. 368, L. 1991.

35-1-619. Terms of class or series determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in 35-1-618, of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, to those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state, for filing, articles of amendment that are effective without shareholder action and that set forth:

(a) the name of the corporation;

(b) the text of the amendment determining the terms of the class or series of shares;

(c) the date the amendment was adopted; and

(d) a statement that the amendment was duly adopted by the board of directors.

History: En. Sec. 34, Ch. 368, L. 1991.

Cross-References

Filing fees, 35-1-1206.

35-1-620. Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Subject to 35-1-630, shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to 35-1-712 and to the limitations of subsection (3) of this section.

(3) Whenever shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

History: **En. Sec. 35, Ch. 368, L. 1991.**

35-1-621. Fractional shares. (1) A corporation may:

(a) issue fractions of a share or pay in money the value of fractions of a share;

(b) arrange for disposition of fractional shares by the shareholders; and

(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by 35-1-626.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the condition:

(a) that the scrip will become void if not exchanged for full shares before a specified date; and

(b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

History: **En. Sec. 36, Ch. 368, L. 1991.**

35-1-622. Subscription for shares before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or unless all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform, so far as practicable, as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed in the same manner as it would collect any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation and is subject to the provisions of 35-1-623.

History: **En. Sec. 37, Ch. 368, L. 1991.**

35-1-623. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corpora-

tion, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares relating to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for the consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or the corporation may also make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

History: En. Sec. 38, Ch. 368, L. 1991.

Cross-References

Delivery of securities — conversion question, 30-8-318.

35-1-624. Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issuance;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

History: En. Sec. 40, Ch. 368, L. 1991.

35-1-625. Share options. A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

History: En. Sec. 41, Ch. 368, L. 1991.

35-1-626. Form and content of certificates. (1) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provide otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the issuing corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, that the certificate represents.

(3) (a) If the issuing corporation is authorized to issue different classes of shares or different series within a class the following must be summarized on the front or back of each certificate:

(i) the designations, relative rights, preferences, and limitations applicable to each class;

(ii) the variations in rights, preferences, and limitations determined for each series; and

(iii) the authority of the board of directors to determine variations for future series.

(b) Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

History: En. Sec. 42, Ch. 368, L. 1991.

Cross-References

Certificated securities negotiable — statements and instructions not negotiable — presumptions, 30-8-105.

Fraud as constituting theft, 45-6-301.

35-1-627. Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by 35-1-626 and, if applicable, subsection (1) of this section.

History: En. Sec. 43, Ch. 368, L. 1991.

Cross-References

Registration of pledge and release of uncertificated securities, 30-8-108.

35-1-628. Restriction on transfer or registration of transfer of shares and other securities. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or have voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by 35-1-627. Unless noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law;

(c) to preserve an election under the Internal Revenue Code; or

(d) for any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) obligate the shareholder first to offer the corporation or other person, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other person, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 44, Ch. 368, L. 1991.

Cross-References

Share transfer restrictions, Title 35, ch. 9, part 2.

35-1-629. Expense of issue. A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

History: En. Sec. 45, Ch. 368, L. 1991.

35-1-630. Corporation's acquisition of its own shares. (1) Except as provided in subsection (2), a corporation may acquire its own shares, and those shares constitute authorized but unissued shares.

(2) If provided by the corporation's articles of incorporation or bylaws, shares acquired pursuant to subsection (1) constitute authorized and issued shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares acquired under this subsection, in which case the shares constitute authorized but unissued shares.

(3) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective on amendment of the articles of incorporation.

(4) Articles of amendment may be adopted by the board of directors without shareholder action, must be delivered to the secretary of state, for filing, and must set forth:

(a) the name of the corporation;

(b) the reduction in the number of authorized shares, itemized by class and series; and

(c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

History: En. Sec. 47, Ch. 368, L. 1991.

Cross-References

Merger, consolidation, share transfer, and sale of assets, Title 35, ch. 1, part 8.

Share transfer restrictions, Title 35, ch. 9, part 2.

Part 7
Distributions

35-1-701 through 35-1-705. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-701. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-702. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-703. En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.

35-1-704. En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.

35-1-705. En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

35-1-706 through 35-1-710 reserved.

35-1-711. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 39, Ch. 475, L. 1981.

35-1-712. Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than a distribution involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

(3) A distribution may not be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) The effect of a distribution under subsection (1) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date money or other property is transferred or debt incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; or

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

History: En. Sec. 48, Ch. 368, L. 1991.

35-1-713. Liability for unlawful distributions. (1) Unless the director complies with the applicable standards of conduct described in 35-1-418, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-1-418; and

(b) from each shareholder for the amount the shareholder accepted if the shareholder knows the distribution was made in violation of this chapter or the articles of incorporation.

History: En. Sec. 93, Ch. 368, L. 1991.

Part 8

Merger, Consolidation, Share Exchange, and Sale of Assets

35-1-801. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979; amd. Sec. 40, Ch. 475, L. 1981.

35-1-802. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.

35-1-803 through 35-1-810. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-803. En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267; amd. Sec. 41, Ch. 475, L. 1981.

35-1-804. En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 42, Ch. 475, L. 1981; amd. Sec. 20, Ch. 131, L. 1983; amd. Sec. 17, Ch. 174, L. 1983.

35-1-805. En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 43, Ch. 475, L. 1981; amd. Sec. 21, Ch. 131, L. 1983; amd. Sec. 18, Ch. 174, L. 1983.

35-1-806. En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269; amd. Sec. 44, Ch. 435, L. 1981.

35-1-807. En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270; amd. Sec. 45, Ch. 475, L. 1981.

35-1-808. En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271; amd. Sec. 46, Ch. 475, L. 1981.

35-1-809. En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272; amd. Sec. 47, Ch. 475, L. 1981.

35-1-810. En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273; amd. Sec. 48, Ch. 475, L. 1981.

35-1-811. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.

35-1-812. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 49, Ch. 475, L. 1981.

35-1-813. Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve a plan of merger.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) the terms and conditions of the merger; and

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) amendments to the articles of incorporation of the surviving corporation; and

(b) other provisions relating to the merger.

History: En. Sec. 124, Ch. 368, L. 1991.

35-1-814. Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve the exchange.

(2) The plan of exchange must set forth:

(a) the name of the corporation from which shares will be acquired and the name of the acquiring corporation;

(b) the terms and conditions of the exchange; and

(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth any other provision relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

History: En. Sec. 125, Ch. 368, L. 1991.

35-1-815. Action on plan. (1) Except as provided in subsection (7), after adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7), or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by an affirmative vote of two-thirds, or a majority vote if authorized by subsection (10), of the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under 35-1-228; and

(b) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in 35-1-226, from its articles before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7):

(a) "participating shares" means shares that entitle their shareholders to participate without limitation in distributions; and

(b) "voting shares" means shares that entitle their shareholders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the plan of merger or share exchange or, if no procedure is set forth, in the manner determined by the board of directors.

(10) A majority of all votes entitled to be cast by each voting group is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 126, Ch. 368, L. 1991.

Cross-References

Notice of shareholders' meeting, 35-1-520.

Sale of assets — approval required, 35-1-823.

Appeal from Secretary of State's refusal to file articles of merger or consolidation, 35-1-1310.

35-1-816. Articles of merger or share exchange. (1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger or share exchange setting forth:

(a) the plan of merger or share exchange; and

(b) if shareholder approval was not required, a statement to that effect; or

(c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

History: En. Sec. 128, Ch. 368, L. 1991.

Cross-References

Filing fees, 35-1-1206.

35-1-817. Effect of merger or share exchange. (1) When a merger takes effect:

(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) the surviving corporation has all liabilities of each corporation party to the merger;

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former shareholders are entitled only to the rights provided in the articles of merger or to their rights under 35-1-826 through 35-1-839.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former shareholders are entitled only to the exchange rights provided in the articles of share exchange or to their rights under 35-1-826 through 35-1-839.

History: En. Sec. 129, Ch. 368, L. 1991.

35-1-818. Merger of subsidiary. (1) A parent corporation owning at least 80% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent corporation or subsidiary.

(2) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(a) the names of the parent corporation and subsidiary; and

(b) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property in whole or part.

(3) The parent corporation shall mail a copy of the summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent corporation may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in 35-1-226.

History: En. Sec. 127, Ch. 368, L. 1991.

35-1-819. Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with 35-1-816 and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of 35-1-813 through 35-1-815 and 35-1-818 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of 35-1-816.

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under 35-1-826 through 35-1-839.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

History: En. Sec. 130, Ch. 368, L. 1991.

Cross-References

Authority of foreign corporation to transact business, 35-1-1026.

Filing fees, 35-1-1206.

Appeal from Secretary of State's refusal to file articles of merger, 35-1-1310.

35-1-820 and 35-1-821 reserved.

35-1-822. Sale of assets in regular course of business — mortgage of assets. (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) transfer any or all of its property to another corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.

History: En. Sec. 131, Ch. 368, L. 1991.

Cross-References

Activities not to be considered transacting business, 35-1-1026.

35-1-823. Sale of assets other than in regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction under this section to be authorized:

(a) the board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation and must contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (8), of the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholders' action.

(7) A transaction that constitutes a distribution is governed by 35-1-712 and not by this section.

(8) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 132, Ch. 368, L. 1991.

Cross-References

Notice of shareholders' meeting, 35-1-520.

35-1-824 and 35-1-825 reserved.

35-1-826. Definitions. As used in 35-1-826 through 35-1-839, the following definitions apply:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" includes the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under 35-1-827 and who exercises that right when and in the manner required by 35-1-829 through 35-1-837.

(4) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment at the average rate currently paid by the corporation on its principal bank loans or, if the corporation has no loans, at a rate that is fair and equitable under all the circumstances.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

History: En. Sec. 133, Ch. 368, L. 1991.

35-1-827. Right to dissent. (1) A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by 35-1-815 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) the corporation is a subsidiary that is merged with its parent corporation under 35-1-818;

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the plan;

(c) consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision with respect to a sinking fund for the redemption or repurchase of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to be voted on any matter or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share created is to be acquired for cash under 35-1-621; or

(e) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and to obtain payment for their shares.

(2) A shareholder entitled to dissent and to obtain payment for shares under 35-1-826 through 35-1-839 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History: En. Sec. 134, Ch. 368, L. 1991; amd. Sec. 2, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 249 in (1)(d)(iv) substituted "cumulate" for "accumulate"; and made minor changes in style.

35-1-828. Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) he submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) he does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

History: En. Sec. 135, Ch. 368, L. 1991.

35-1-829. Notice of dissenters' rights. (1) If a proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under 35-1-826 through 35-1-839 and must be accompanied by a copy of 35-1-826 through 35-1-839.

(2) If a corporate action creating dissenters' rights under 35-1-827 is taken without a vote of shareholders, the corporation shall give written notification to all shareholders entitled to assert dissenters' rights that the

action was taken and shall send them the dissenters' notice described in 35-1-831.

History: **En. Sec. 136, Ch. 368, L. 1991.**

35-1-830. Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) may not vote his shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for his shares under 35-1-826 through 35-1-839.

History: **En. Sec. 137, Ch. 368, L. 1991.**

35-1-831. Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of 35-1-830.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not he acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of 35-1-826 through 35-1-839.

History: **En. Sec. 138, Ch. 368, L. 1991.**

35-1-832. Duty to demand payment. (1) A shareholder sent a dissenters' notice described in 35-1-831 shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to 35-1-831(2)(c), and deposit his certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under 35-1-826 through 35-1-839.

History: **En. Sec. 139, Ch. 368, L. 1991.**

35-1-833. Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under 35-1-835.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

History: En. Sec. 140, Ch. 368, L. 1991.

35-1-834. Payment. (1) Except as provided in 35-1-836, as soon as the proposed corporate action is taken or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with 35-1-832 the amount the corporation estimates to be the fair value of the dissenter's shares plus accrued interest.

(2) The payment must be accompanied by:

(a) the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) a statement of the corporation's estimate of the fair value of the shares;

(c) an explanation of how the interest was calculated;

(d) a statement of the dissenter's right to demand payment under 35-1-837; and

(e) a copy of 35-1-826 through 35-1-839.

History: En. Sec. 141, Ch. 368, L. 1991.

35-1-835. Failure to take action. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under 35-1-831 and repeat the payment demand procedure.

History: En. Sec. 142, Ch. 368, L. 1991.

35-1-836. After-acquired shares. (1) A corporation may elect to withhold payment required by 35-1-834 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under 35-1-837.

History: En. Sec. 143, Ch. 368, L. 1991.

35-1-837. Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under 35-1-834, or reject the corporation's offer under 35-1-836 and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under 35-1-834 or offered under 35-1-836 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under 35-1-834 within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his shares.

History: En. Sec. 144, Ch. 368, L. 1991.

35-1-838. Court action. (1) If a demand for payment under 35-1-837 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of his after-acquired shares for which the corporation elected to withhold payment under 35-1-836.

History: En. Sec. 145, Ch. 368, L. 1991.

35-1-839. Court costs and attorney fees. (1) The court in an appraisal proceeding commenced under 35-1-838 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under 35-1-837.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of 35-1-829 through 35-1-837; or

(b) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by 35-1-826 through 35-1-839.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award the counsel reasonable attorney fees to be paid out of the amounts awarded the dissenters who were benefited.

History: En. Sec. 146, Ch. 368, L. 1991.

Part 9

Dissolution and Liquidation

Part Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-1-901 through 35-1-912. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-901. En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275; amd. Sec. 50, Ch. 475, L. 1981; amd. Sec. 22, Ch. 131, L. 1983; amd. Sec. 19, Ch. 174, L. 1983.

35-1-902. En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276; amd. Sec. 23, Ch. 131, L. 1983; amd. Sec. 20, Ch. 174, L. 1983.

35-1-903. En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277; amd. Sec. 24, Ch. 131, L. 1983; amd. Sec. 21, Ch. 174, L. 1983.

35-1-904. En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278; amd. Sec. 25, Ch. 131, L. 1983.

35-1-905. En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.

35-1-906. En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.

35-1-907. En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281; amd. Sec. 26, Ch. 131, L. 1983; amd. Sec. 22, Ch. 174, L. 1983.

35-1-908. En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282; amd. Sec. 27, Ch. 131, L. 1983; amd. Sec. 23, Ch. 174, L. 1983.

35-1-909. En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283; amd. Sec. 28, Ch. 131, L. 1983.

35-1-910. En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 29, Ch. 131, L. 1983; amd. Sec. 24, Ch. 174, L. 1983; amd. Sec. 4, Ch. 445, L. 1985.

35-1-912. En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286; amd. Sec. 30, Ch. 131, L. 1983.

35-1-913 through 35-1-920 reserved.

35-1-921 through 35-1-927. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-921. En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

35-1-922. En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.

35-1-923. En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.

35-1-924. En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

35-1-925. En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

35-1-926. En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

35-1-927. En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

35-1-928. Renumbered 35-1-944. Sec. 221, Ch. 368, L. 1991.

35-1-929. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.

35-1-930. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.

35-1-931. Dissolution by incorporators or initial directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) if issues were shared, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

History: En. Sec. 147, Ch. 368, L. 1991.

Cross-References

Filing fees, 35-1-1206.

Appeal from Secretary of State's refusal to file articles of dissolution, 35-1-1310.

35-1-932. Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) the board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), requires a greater vote or a vote by voting groups to be adopted, the proposal to dissolve must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (6), of all the votes entitled to be cast on that proposal.

(6) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 148, Ch. 368, L. 1991.

Cross-References

Notice of shareholders' meeting, 35-1-520.

35-1-933. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) if dissolution was approved by the shareholders:

(i) the number of votes entitled to be cast on the proposal to dissolve; and

(ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) if voting by voting groups is required, the information required by subsection (1)(c) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 149, Ch. 368, L. 1991.

35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revoca-

tion by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933(1)(c) or (1)(d).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

History: En. Sec. 150, Ch. 368, L. 1991.

Cross-References

Notice of shareholders' meeting, 35-1-520.

35-1-935. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in part 4;

(d) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the corporation.

History: **En. Sec. 151, Ch. 368, L. 1991.**

35-1-936. Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

History: **En. Sec. 152, Ch. 368, L. 1991.**

Cross-References

Shareholders' right to dissent, 35-1-827.

35-1-937. Unknown claims against dissolved corporation. (1) Subject to 35-1-936, the dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or shareholders for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers have power to take corporate or other action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under 35-1-936 or this section:

(a) against the dissolved corporation, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

(3) Subsections (1) and (2) apply to foreign corporations and their shareholders transacting business in this state for any claims otherwise arising or accruing under Montana law.

History: **En. Sec. 153, Ch. 368, L. 1991; amd. Sec. 3, Ch. 249, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 249 at beginning of (1) substituted "35-1-936" for "35-1-939"; and made minor changes in style.

35-1-938. Grounds for judicial dissolution. The district court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(a) the corporation obtained its articles of incorporation through fraud; or

(b) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

History: En. Sec. 154, Ch. 368, L. 1991.

Cross-References

Appointment of receivers, 27-20-102.

Quo warranto proceedings, Title 27, ch. 28.

Defense of ultra vires, 35-1-117.

Derivative proceeding — payment of expenses, 35-1-547.

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-1-939. Discretion of court to grant relief other than dissolution. (1) In any action filed by a shareholder or director to dissolve the corporation on the grounds enumerated in 35-1-938, the court may make any order to grant the relief other than dissolution as, in its discretion, it considers appropriate, including, without limitation, an order:

(a) canceling or altering any provision contained in the articles of incorporation, in any amendment of the articles of incorporation, or in the bylaws of the corporation;

(b) canceling, altering, or enjoining any resolution or other act of the corporation;

(c) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

(d) providing for the purchase at fair value of shares of any shareholder, either by the corporation or by other shareholders.

(2) Relief under subsection (1) may be granted as an alternative to a decree of dissolution or may be granted whenever, under the circumstances of the case, relief but not dissolution would be appropriate.

History: **En. Sec. 155, Ch. 368, L. 1991.**

35-1-940. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is or was last located.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

History: **En. Sec. 156, Ch. 368, L. 1991.**

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto proceedings, Title 27, ch. 28.

Suretyship, Title 28, ch. 11, part 4.

35-1-941. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver

if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

History: En. Sec. 157, Ch. 368, L. 1991.

35-1-942. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-1-938 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with 35-1-935 and the notification of claimants in accordance with 35-1-936 and 35-1-937.

History: En. Sec. 158, Ch. 368, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto proceedings, Title 27, ch. 28.

35-1-943. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay him or his representative that amount.

History: En. Sec. 159, Ch. 368, L. 1991.

35-1-944. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state, nor shall the secretary of state file any application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979; amd. Sec. 152, Ch. 575, L. 1981; amd. Sec. 5, Ch. 445, L. 1985; Sec. 35-1-928, MCA 1989; redes. 35-1-944 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Withdrawal of foreign corporation, 35-1-1037.

Part 10

Foreign Corporations

35-1-1001 through 35-1-1013. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1001. En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).

35-1-1002. En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2); amd. Sec. 51, Ch. 475, L. 1981.

35-1-1003. En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.

35-1-1004. En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117; amd. Sec. 1, Ch. 583, L. 1983.

35-1-1005. En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.

35-1-1006. En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101; amd. Sec. 52, Ch. 475, L. 1981; amd. Sec. 4, Ch. 456, L. 1983.

35-1-1007. En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102; amd. Sec. 53, Ch. 475, L. 1981.

35-1-1008. En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103; amd. Sec. 54, Ch. 475, L. 1981; amd. Sec. 31, Ch. 131, L. 1983; amd. Sec. 25, Ch. 174, L. 1983.

35-1-1009. En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104; amd. Sec. 55, Ch. 475, L. 1981; amd. Sec. 32, Ch. 131, L. 1983.

35-1-1010. En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

35-1-1011. En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111; amd. Sec. 33, Ch. 131, L. 1983.

35-1-1012. En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

35-1-1013. En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107; amd. Sec. 34, Ch. 131, L. 1983; amd. Sec. 26, Ch. 174, L. 1983.

35-1-1014. Renumbered 35-1-1034. Sec. 221, Ch. 368, L. 1991.

35-1-1015 through 35-1-1020. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1015. En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109; amd. Sec. 56, Ch. 475, L. 1981.

35-1-1016. En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.

35-1-1017. En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979; amd. Sec. 57, Ch. 475, L. 1981; amd. Sec. 27, Ch. 174, L. 1983.

35-1-1018. En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113; amd. Sec. 35, Ch. 131, L. 1983.

35-1-1019. En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.

35-1-1020. En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115; amd. Sec. 5, Ch. 456, L. 1983.

35-1-1021 through 35-1-1024 reserved.

35-1-1025. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 4, Ch. 273, L. 1989.

35-1-1026. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

History: En. Sec. 160, Ch. 368, L. 1991.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Classification of business trusts as foreign, 35-5-102.

35-1-1027. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day but not to exceed a total of $1,000 for each year that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History: En. Sec. 161, Ch. 368, L. 1991.

35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: En. Sec. 162, Ch. 368, L. 1991.

35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration; or

(c) the state or country of its incorporation.

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 163, Ch. 368, L. 1991.

35-1-1030. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as a domestic corporation of similar character and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 164, Ch. 368, L. 1991.

Cross-References

Appeal from Secretary of State's refusal to file articles of incorporation, 35-1-1310.

35-1-1031. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of

35-1-308, to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word “corporation”, “incorporated”, “company”, or “limited” or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.” to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the secretary of state’s records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name

until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029.

History: En. Sec. 165, Ch. 368, L. 1991; amd. Sec. 84, Ch. 120, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 120 in (2)(f) inserted reference to limited liability company name.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Registration of assumed business name by foreign corporation or foreign limited partnership — when prohibited, 30-13-205.

Trademarks and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Nonprofit corporation, corporate name, 35-2-305.

Foreign nonprofit corporation, corporate name, 35-2-826.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-1-1032. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office;

(b) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

History: En. Sec. 166, Ch. 368, L. 1991.

35-1-1033. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the foreign corporation's name;

(b) the street address of its current registered office;

(c) if the current registered office is to be changed, the street address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change

and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: En. Sec. 167, Ch. 368, L. 1991.

Cross-References

Change of registered office or registered agent, 35-1-314.

35-1-1034. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108; Sec. 35-1-1014, MCA 1989; redes. 35-1-1034 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-1-1035 reserved.

35-1-1036. Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 168, Ch. 368, L. 1991.

Cross-References

Tax clearance certificate required for withdrawal from state, 35-1-944.

Filing fees, 35-1-1206.

35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through 35-1-1034 and 35-1-1036 through 35-1-1040.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

History: En. Sec. 169, Ch. 368, L. 1991.

35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state under 35-1-1033 or 35-1-1036 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

History: En. Sec. 170, Ch. 368, L. 1991.

35-1-1039. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall mail to the foreign corporation the written notice of the determination.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after the notice is mailed, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if a report or communication is not on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 171, Ch. 368, L. 1991; amd. Sec. 4, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 249 in (1) and in two places in (2) substituted requirement that Secretary of State mail written notice of the determination for former requirement that the determination be served on the foreign corporation pursuant to 35-1-1034; and made minor changes in style.

35-1-1040. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected pursuant to 35-1-1034. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 172, Ch. 368, L. 1991.

Part 11

Annual Report — Corporate Records

35-1-1101. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979; amd. Sec. 58, Ch. 475, L. 1981; amd. Sec. 28, Ch. 174, L. 1983; amd. Sec. 1, Ch. 153, L. 1989.

35-1-1102. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.

35-1-1103. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.

35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation shall also include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within Montana and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the year ending December 31 preceding the date provided in this section for the filing of the report and the gross amount of business transacted by the corporation at or from places of business in Montana. If on December 31 preceding the time provided in this section for the filing of the report the corporation had not been authorized to transact business in Montana for 1 year, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in Montana and December 31. If all the property of the corporation is located in Montana and all of its business is transacted at or from places of business in Montana, the information required by this subsection need not be reported.

(3) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and

delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 179, Ch. 368, L. 1991.

Cross-References

Filing fees, 35-1-1206.

Grounds for involuntary dissolution — failure to file, 35-6-102.

False financial statements — theft — deceptive practices, 45-6-301, 45-6-317.

35-1-1105 reserved.

35-1-1106. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;

(e) the financial statements available to shareholders for the past 3 years under 35-1-1110;

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-1-1104.

History: En. Sec. 173, Ch. 368, L. 1991.

35-1-1107. Inspection of records by shareholders. (1) Subject to 35-1-1108(3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in 35-1-1106(5) if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the

requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under 35-1-1107(1);

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with his purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under 35-1-523 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

History: En. Sec. 174, Ch. 368, L. 1991.

35-1-1108. Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

(2) The right to copy records under 35-1-1107 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the shareholders. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under 35-1-1107(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

History: En. Sec. 175, Ch. 368, L. 1991.

35-1-1109. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

History: En. Sec. 176, Ch. 368, L. 1991.

35-1-1110. Financial statement for shareholders. Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: En. Sec. 177, Ch. 368, L. 1991.

35-1-1111. Other reports to shareholders. (1) If a corporation indemnifies or advances expenses to a director under 35-1-442, 35-1-443, 35-1-444, or 35-1-445 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

History: En. Sec. 178, Ch. 368, L. 1991.

Part 12

Fees and Charges

35-1-1201 through 35-1-1205. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1201. En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120; amd. Sec. 2, Ch. 156, L. 1987.

35-1-1202. En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121; amd. Sec. 59, Ch. 475, L. 1981.

35-1-1203. En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124; amd. Sec. 60, Ch. 475, L. 1981.

35-1-1206. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 7, Ch. 368, L. 1991.

Cross-References

Fees relating to nonprofit corporations, 35-2-1003.

Fees relating to limited partnerships, 35-12-521.

35-1-1207. License fee. (1) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each domestic corporation a license fee based upon the number of shares that it will have authority to issue or the increase in the number of shares that it will have authority to issue, at the time of:

(a) filing its articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares that the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares that the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state have authority to issue.

(2) The license fee for domestic corporations is as follows:

(a) 0 to 50,000 shares	$ 50
(b) 50,000 to 100,000 shares	100
(c) 100,000 to 250,000 shares	250
(d) 250,000 to 500,000 shares	400
(e) 500,000 to 1,000,000 shares	600
(f) over 1,000,000 shares	1,000

(3) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each foreign corporation a license fee of $100 at the time of filing an application for a certificate of authority to transact business.

History: En. Sec. 8, Ch. 368, L. 1991.

Part 13

Secretary of State

35-1-1301 through 35-1-1306. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1301. En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.

35-1-1302. En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.

35-1-1303. En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.

35-1-1304. En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

35-1-1305. En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

35-1-1306. En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.

35-1-1307. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: En. Sec. 15, Ch. 368, L. 1991.

35-1-1308. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

History: En. Sec. 6, Ch. 368, L. 1991.

35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy, and the receipt for the filing fee. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History: En. Sec. 11, Ch. 368, L. 1991.

Cross-References

Articles of incorporation, 35-1-216.

Amendment of articles, 35-1-230.

Restated articles of incorporation, 35-1-231.

Foreign nonprofit corporations — same duty, 35-2-1112.

35-1-1310. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 12, Ch. 368, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-1-1311. Evidentiary effect of copy of filed document. A certificate attached to a copy of the document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 13, Ch. 368, L. 1991.

Cross-References

Foreign nonprofit corporations — certified copies, 35-2-1111.

Religious corporations — certificate of incorporation, 35-3-203.

35-1-1312. Certificate of existence or authorization. (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-1-1104 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

History: En. Sec. 14, Ch. 368, L. 1991.

CHAPTER 2

NONPROFIT CORPORATIONS

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35-2-1101 through 35-2-1106. Repealed.
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35-2-1301. Standing.
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35-2-1401. Prohibited distributions.
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Chapter Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Part 1
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35-2-101. Renumbered 35-2-113. Sec. 175, Ch. 411, L. 1991.

35-2-102 through 35-2-112. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-102. En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302; amd. Sec. 3, Ch. 273, L. 1989.

35-2-103. En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

35-2-104. En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.

35-2-105. En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.

35-2-106. En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.

35-2-107. En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.

35-2-108. En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.

35-2-109. En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.

35-2-110. En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.

35-2-111. En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.

35-2-112. En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.

35-2-113. Short title. This chapter shall be known and may be cited as the “Montana Nonprofit Corporation Act”.

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301; Sec. 35-2-101, MCA 1989; redes. 35-2-113 by Sec. 175, Ch. 411, L. 1991.

35-2-114. Definitions. As used in this chapter, the following definitions apply:

(1) “Approved by the members” means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

(4) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(5) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Deliver" includes mail.

(9) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(10) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(11) "Domestic corporation" means a corporation.

(12) "Effective date of notice" has the meaning provided in 35-2-115(5).

(13) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(14) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(15) "File", "filed", or "filing" means filed in the office of the secretary of state.

(16) "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

(17) "Governmental subdivision" includes an authority, county, district, and municipality.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent individual.

(20) "Means" denotes a complete definition.

(21) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(22) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

(23) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(24) "Notice" means that term as described in 35-2-115.

(25) "Person" includes any individual or entity.

(26) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(27) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(28) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(29) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

(30) "Religious corporation" means a domestic corporation designated as a religious corporation.

(31) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(32) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(33) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(34) "Vote" includes authorization by written ballot and written consent.

(35) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

History: En. Sec. 1, Ch. 411, L. 1991.

35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: En. Sec. 2, Ch. 411, L. 1991.

35-2-116. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: En. Sec. 3, Ch. 411, L. 1991.

35-2-117. Purposes. (1) A corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if the incorporation under this chapter is not prohibited by the other statute. The corporation is subject to all limitations of the other statute.

History: En. Sec. 28, Ch. 411, L. 1991.

35-2-118. General powers. (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(a) to sue and be sued, complain, and defend in its corporate name;

(b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;

(c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

(g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by 35-2-435;

(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties; and to fix their compensation;

(l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) to impose dues, assessments, admission, and transfer fees upon its members;

(o) to establish conditions for admission of members, admit members, and issue memberships;

(p) to carry on a business; or

(q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.

(2) A corporation may not have or issue shares of stock.

History: En. Sec. 29, Ch. 411, L. 1991.

Cross-References

Bylaws, 35-2-229, 35-2-230.

35-2-119. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of its board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature his name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in 35-2-311 and 35-2-829;

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 411, L. 1991.

35-2-120. Facsimile filing. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section and the signatures on the facsimile copy in the same manner as an original for purposes of 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 411, L. 1991.

35-2-121. Effective date of document. (1) Except as provided in subsection (2), a document is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 8, Ch. 411, L. 1991.

35-2-122. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) by delivering the articles of correction to the secretary of state.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 9, Ch. 411, L. 1991.

35-2-123. Penalty for signing false documents. (1) The execution of any document that must be filed with the secretary of state under 35-2-119 through 35-2-122, 35-2-1003, 35-2-1108 through 35-2-1112, and this section constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this chapter.

History: En. Sec. 14, Ch. 411, L. 1991.

Cross-References

Penalty for false swearing, 45-7-202.

35-2-124 and 35-2-125 reserved.

35-2-126. Designation of status of nonprofit corporations. (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:

(a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.

(b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.

(2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:

(a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.

(b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.

(c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

(3) A domestic or foreign corporation not designated as provided in subsections (1) and (2) must be designated pursuant to 35-2-133. *(Subsection (3) terminates January 1, 1996—sec. 181, Ch. 411, L. 1991.)*

History: En. Sec. 16, Ch. 411, L. 1991.

35-2-127. Private foundations. (1) Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

(a) shall distribute amounts for each taxable year at a time and in a manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) may not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) may not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) may not make any taxable investments or expenditures as provided in sections 4944 and 4945 of the Internal Revenue Code; and

(e) may not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) All references in this section to sections of the Internal Revenue Code are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

History: En. Sec. 17, Ch. 411, L. 1991.

Cross-References

Taxes on golf courses owned by nonprofit corporations, 15-6-134.

Tax-exempt property, Title 15, ch. 6, part 2.

Tax-exempt property categories, 15-6-201.

Exempt securities, 30-10-104.

35-2-128. Religious corporations — constitutional protections. If the religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the United States or the Montana constitution.

History: En. Sec. 20, Ch. 411, L. 1991.

35-2-129 reserved.

35-2-130. Judicial relief. (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the registered office is located may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under

this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

History: En. Sec. 18, Ch. 411, L. 1991.

35-2-131. Attorney general. (1) Notice must be given to the attorney general of the commencement of any proceeding that this chapter authorizes the attorney general to bring but that has been commenced by another person.

(2) Whenever a provision of this chapter requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a proceeding if no proceeding has been commenced, the attorney general may take appropriate action including but not limited to seeking injunctive relief. If a proceeding has been commenced by a person other than the attorney general, the attorney general may intervene, as of right, in the proceeding.

History: En. Sec. 19, Ch. 411, L. 1991.

35-2-132. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, by a director, or by a member or members in a derivative proceeding.

(3) (a) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation.

(b) The proceeding may be brought:

(i) by a director;

(ii) by the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative; or

(iii) in the case of a public benefit corporation, by the attorney general.

History: En. Sec. 30, Ch. 411, L. 1991.

Cross-References

Power of court to dissolve corporation, 35-2-728.

Activities not to be considered transacting business, 35-2-820.

Transacting business without certificate of authority, 35-2-821.

35-2-133. *(Temporary)* **Interim designation.** (1) Each domestic corporation not designated pursuant to 35-2-126 is designated as follows:

(a) a corporation that is organized primarily or exclusively for religious purposes is a religious corporation;

(b) a corporation that is not provided for under the provisions of subsection (1)(a) but that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(c) a corporation that is not provided for under the provisions of subsection (1)(a) or (1)(b), but that is organized for a public or charitable purpose and that, upon dissolution, shall distribute its assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(d) a corporation that is not provided for under the provisions of subsection (1)(a), (1)(b), or (1)(c) is a mutual benefit corporation.

(2) Foreign corporations authorized to transact business in this state but not designated pursuant to 35-2-126 are designated as a public benefit corporation, mutual benefit corporation, or religious corporation in accordance with the provisions of subsection (1). *(Terminates January 1, 1996—sec. 181, Ch. 411, L. 1991.)*

History: En. Sec. 173, Ch. 411, L. 1991.

Part 2

Formation — Articles of Incorporation Bylaws — Amendments

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-2-201 through 35-2-211. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-201. En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328; amd. Sec. 36, Ch. 131, L. 1983.

35-2-202. En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979; amd. Sec. 2, Ch. 559, L. 1987; amd. Sec. 193, Ch. 368, L. 1991.

35-2-203. En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330; amd. Sec. 37, Ch. 131, L. 1983.

35-2-204. En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

35-2-205. En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

35-2-206. En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

35-2-208. En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335; amd. Sec. 38, Ch. 131, L. 1983.

35-2-209. En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336; amd. Sec. 39, Ch. 131, L. 1983.

35-2-210. En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979; amd. Sec. 40, Ch. 131, L. 1983; amd. Sec. 6, Ch. 445, L. 1985.

35-2-211. En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.

35-2-212. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 21, Ch. 411, L. 1991.

Cross-References

Directors and officers, Title 35, ch. 2, part 4.

Fees, 35-2-1003.

35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office;

(d) the name and address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under 35-2-418, 35-2-435, or 35-2-436.

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

History: En. Sec. 22, Ch. 411, L. 1991.

Cross-References

Number, election, and term of directors, 35-2-415, 35-2-417, 35-2-419.

35-2-214. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed by the secretary of state.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 23, Ch. 411, L. 1991.

Cross-References

Certificates as prima facie evidence, 35-2-1111.

Religious corporations, 35-3-203.

35-2-215. Liability for preincorporation transactions. A person who purports to act as or on behalf of a corporation but who knows that there was no incorporation under this chapter is jointly and severally liable for all liabilities created while so acting.

History: En. Sec. 24, Ch. 411, L. 1991.

35-2-216. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state in accordance with 35-2-427.

History: En. Sec. 25, Ch. 411, L. 1991.

Cross-References

Place and notice of directors' meetings, 35-2-427.

Meetings of members, 35-2-526, 35-2-527.

35-2-217. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation consistent with law or the articles of incorporation.

History: En. Sec. 26, Ch. 411, L. 1991.

35-2-218. Emergency bylaws and powers. (1) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(a) how to call a meeting of the board;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: En. Sec. 27, Ch. 411, L. 1991.

35-2-219 and 35-2-220 reserved.

35-2-221. Authority to amend. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

History: En. Sec. 110, Ch. 411, L. 1991.

35-2-222. Amendment by directors. (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by this chapter to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes

of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: En. Sec. 111, Ch. 411, L. 1991.

35-2-223. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's articles must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) except as provided in 35-2-222(1), by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or if board approval is required by subsection (1)(a) to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: En. Sec. 112, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

35-2-224. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment affects another class or members of another class.

(2) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit corporation or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(5) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members of a public benefit corporation or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 113, Ch. 411, L. 1991.

35-2-225. Articles of amendment. A corporation that amends its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(b) (i) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class; and

(ii) a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) if approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-232, a statement that the approval was obtained.

History: En. Sec. 114, Ch. 411, L. 1991.

35-2-226. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time, with or without approval by members or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in 35-2-223.

(3) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change that the restatement would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under 35-2-223.

(7) If the restatement includes an amendment that requires approval pursuant to 35-2-232, the board must submit the restatement for this approval.

(8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring approval by the members, the information required by 35-2-225; and

(c) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to 35-2-232, a statement that the approval was obtained.

(9) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (8).

History: En. Sec. 115, Ch. 411, L. 1991.

Cross-References

Articles of incorporation, 35-2-213.

Fees, 35-2-1003.

Filing duty of Secretary of State, 35-2-1109.

35-2-227. Amendment pursuant to judicial reorganization. (1) A corporation's articles may be amended without board approval, approval by the members, or approval required pursuant to 35-2-232 if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles, after amendment, contain only provisions required or permitted by 35-2-213.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: En. Sec. 116, Ch. 411, L. 1991.

35-2-228. Effect of amendment and restatement. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: En. Sec. 117, Ch. 411, L. 1991.

35-2-229. Amendment by directors. If a corporation does not have members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: En. Sec. 118, Ch. 411, L. 1991.

35-2-230. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's bylaws must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; or

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the bylaws or if board approval is required by subsection (1)(a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: En. Sec. 119, Ch. 411, L. 1991.

35-2-231. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment would affect another class or members of another class.

(2) Members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of all or part of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(5) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 120, Ch. 411, L. 1991.

35-2-232. Approval by third persons. The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of the person or persons.

History: En. Sec. 121, Ch. 411, L. 1991.

35-2-233. Amendment terminating members or redeeming or canceling memberships. (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations, the production and mailing costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of 35-2-520 do not apply to any amendment that meets the requirements of this chapter.

History: En. Sec. 122, Ch. 411, L. 1991.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-2-301 through 35-2-304. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections: **35-2-301.** En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307; amd. Sec. 6, Ch. 456, L. 1983.

35-2-302. En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.

35-2-303. En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309; amd. Sec. 41, Ch. 131, L. 1983.

35-2-304. En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.

35-2-305. Corporate name. (1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names.

History: En. Sec. 31, Ch. 411, L. 1991; amd. Sec. 85, Ch. 120, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 120 in (2)(e) inserted reference to limited liability company name.

Cross-References

Petition to change name of nonprofit corporation, 27-31-102.

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1031.

Foreign nonprofit corporation, corporate name, 35-2-826.

Reservation or transfer fee, 35-2-1003.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-306. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: En. Sec. 32, Ch. 411, L. 1991.

35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by 35-2-826, the state or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: En. Sec. 33, Ch. 411, L. 1991.

35-2-308 reserved.

35-2-309. Registered name and registered agent. Each corporation shall continuously maintain in this state:

(1) a registered office with the same address as that of the registered agent; and

(2) a registered agent, who must be one of the following:

(a) an individual who resides in this state and whose office is identical to the registered office;

(b) a domestic business or nonprofit corporation whose office is identical to the registered office; or

(c) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

History: En. Sec. 34, Ch. 411, L. 1991.

Cross-References

Agency, Title 28, ch. 10.

35-2-310. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: En. Sec. 35, Ch. 411, L. 1991.

Cross-References

Foreign corporation changes, 35-2-828, 35-2-829.

Fees, 35-2-1003.

35-2-311. Resignation of registered agent. (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corpora-

tion at its principal office as shown in the most recent annual report filed pursuant to 35-2-904.

(3) The agency appointment is terminated, and the registered office discontinued, if so provided, 31 days after the date on which the statement was filed.

History: **En. Sec. 36, Ch. 411, L. 1991.**

35-2-312 and 35-2-313 reserved.

35-2-314. Service of process on corporation. (1) Service of process on a corporation must be made upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its members, for the purpose of service or demand, on a corporation dissolved pursuant to 35-2-309 through 35-2-311, 35-2-315, 35-2-510 through 35-2-514, 35-2-516 through 35-2-520, 35-2-522, 35-2-524, part 13 of this chapter, and this section:

(a) in the case of a dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term:

(i) any one of those persons designated as receiver by a court of competent jurisdiction; or

(ii) any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

History: **En. Sec. 37, Ch. 411, L. 1991.**

35-2-315. Demand on or notice to corporation. (1) This section applies when a demand or notice is required or permitted by law, but the demand or notice is not required to be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail if it is mailed postpaid and correctly addressed.

History: **En. Sec. 38, Ch. 411, L. 1991.**

Part 4

Directors and Officers — Indemnification

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-2-401 through 35-2-413. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-401. En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.

35-2-402. En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.

35-2-403. En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.

35-2-404. En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.

35-2-405. En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-406. En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-407. En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.

35-2-408. En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.

35-2-409. En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.

35-2-410. En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.

35-2-411. En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-412. En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.

35-2-413. En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.

35-2-414. Requirement for and duties of board. (1) Each corporation must have a board of directors.

(2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent.

History: En. Sec. 75, Ch. 411, L. 1991.

35-2-415. Qualifications and numbers of directors. (1) All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

(2) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(3) The number of directors may be increased or decreased, but to not fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

History: En. Sec. 76, Ch. 411, L. 1991.

35-2-416. General standards for directors. (1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27.

History: En. Sec. 91, Ch. 411, L. 1991.

35-2-417. Election, designation and appointment of directors. (1) If the corporation has members, all the directors except the initial directors must be elected at the first annual meeting of members and at each annual meeting thereafter unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or are designated.

(2) If the corporation does not have members, all the directors except the initial directors must be elected, appointed, or designated as provided in the articles or bylaws. If a method of designation or appointment is not set forth in the articles or bylaws, the directors, other than the initial directors, must be elected by the board.

History: En. Sec. 77, Ch. 411, L. 1991.

35-2-418. Director conflict of interest. (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (2) or (3).

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

(i) the attorney general; or

(ii) a state district court in an action in which the attorney general is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (2)(a) or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

(6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under

subsection (3)(b). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

History: En. Sec. 92, Ch. 411, L. 1991.

35-2-419. Terms of directors generally — staggered terms. (1) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed 5 years. In the absence of any term specified in the articles or bylaws, the term of each director is 1 year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies or until there is a decrease in the number of directors.

(5) The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

History: En. Sec. 78, Ch. 411, L. 1991.

35-2-420. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, the president, or the secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

History: En. Sec. 79, Ch. 411, L. 1991.

35-2-421. Removal of directors elected by members or directors. (1) The members may remove one or more directors elected by them without cause.

(2) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(3) Except as provided in subsection (9), a director may be removed under subsection (1) or (2) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed:

(a) if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal; or

(b) if the director was elected by a class, chapter, unit, or grouping of members and the number of votes of that class, chapter, unit, or grouping of members sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose or one of the purposes of the meeting is removal of the director.

(6) In computing whether a director is protected from removal under subsections (2) through (4), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5).

(8) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or by a greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(10) The articles or bylaws of a religious corporation may:

(a) limit the application of this section; and

(b) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members of the board.

History: En. Sec. 80, Ch. 411, L. 1991.

35-2-422. Removal of designated or appointed directors. (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. The removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

History: En. Sec. 81, Ch. 411, L. 1991.

35-2-423. Removal of directors by judicial proceeding. (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in the state, the county where its registered office is located may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation, if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416, 35-2-418, 35-2-435, or 35-2-436; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

History: En. Sec. 82, Ch. 411, L. 1991.

35-2-424. Vacancy on board. (1) Unless the articles or bylaws provide otherwise and except as provided in subsections (2) and (3), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) (i) the members, if any, may fill the vacancy; or

(ii) if the vacant office was held by a director elected by a class, chapter, organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy must be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-2-420(2) or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 83, Ch. 411, L. 1991.

35-2-425. Compensation of directors. Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: En. Sec. 84, Ch. 411, L. 1991.

35-2-426 reserved.

35-2-427. Regular and special meetings. (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in the state or out of the state.

(3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by or to conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

History: En. Sec. 85, Ch. 411, L. 1991.

35-2-428. Action without meeting. (1) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: En. Sec. 86, Ch. 411, L. 1991.

35-2-429. Call and notice of meetings. (1) Unless the articles or bylaws provide otherwise or unless the provisions of subsection (3) apply, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws, or subsection (3) provide otherwise, regular meetings of the board must be preceded by at least 2 days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to 35-2-430.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board.

History: En. Sec. 87, Ch. 411, L. 1991.

35-2-430. Waiver of notice. (1) A director may at any time waive a notice required by this chapter, the articles, or bylaws. Except as provided in subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not vote for or assent to that action.

History: En. Sec. 88, Ch. 411, L. 1991.

35-2-431. Quorum and voting. (1) Except as otherwise provided in this chapter, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or bylaws require the vote of a greater number of directors.

History: **En. Sec. 89, Ch. 411, L. 1991.**

35-2-432 reserved.

35-2-433. Committees of the board. (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee must have two or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles or bylaws to take action under 35-2-431.

(3) Sections 35-2-427 through 35-2-431, which govern meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under 35-2-414.

(5) A committee of the board may not:

(a) authorize distributions;

(b) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(d) adopt, amend, or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-2-416.

History: **En. Sec. 90, Ch. 411, L. 1991.**

35-2-434 reserved.

35-2-435. Loans to or guaranties for directors and officers. (1) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(2) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

History: **En. Sec. 93, Ch. 411, L. 1991.**

35-2-436. Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in 35-2-416, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-2-416; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

History: En. Sec. 94, Ch. 411, L. 1991.

35-2-437 and 35-2-438 reserved.

35-2-439. Required officers. (1) Unless otherwise provided in the articles or bylaws, a corporation has a president, a secretary, a treasurer, and any other officers appointed by the board.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) A person may simultaneously hold more than one office in a corporation.

History: En. Sec. 95, Ch. 411, L. 1991.

35-2-440. Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

History: En. Sec. 96, Ch. 411, L. 1991.

35-2-441. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) This part does not modify any limitation of liability of officers provided by Title 27.

History: En. Sec. 97, Ch. 411, L. 1991.

35-2-442. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(2) A board may remove any officer at any time, with or without cause.

History: En. Sec. 98, Ch. 411, L. 1991.

35-2-443. Contract rights of officers. (1) The appointment of an officer does not of itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: En. Sec. 99, Ch. 411, L. 1991.

35-2-444. Officers' authority to execute documents. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by a lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers did not have authority to execute the contract or other instrument if it is signed by:

(1) the presiding officer of the board and the president; or

(2) one person from each of the following:

(a) the presiding officer of the board or the president; and

(b) a vice president, the secretary, treasurer, or executive director.

History: En. Sec. 100, Ch. 411, L. 1991.

35-2-445 reserved.

35-2-446. Definitions. As used in 35-2-446 through 35-2-454, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at

the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or the participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-2-452, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 101, Ch. 411, L. 1991.

35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) conducted himself in good faith;

(b) reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: **En. Sec. 102, Ch. 411, L. 1991.**

35-2-448. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

History: **En. Sec. 103, Ch. 411, L. 1991.**

35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451.

History: **En. Sec. 104, Ch. 411, L. 1991.**

35-2-450. Court-ordered indemnification. Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines that the director:

(1) is entitled to mandatory indemnification under 35-2-448, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-2-447(1) or was adjudged liable as described in 35-2-447(4). If the director was adjudged liable, indemnification is limited to reasonable expenses incurred.

History: **En. Sec. 105, Ch. 411, L. 1991.**

35-2-451. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-2-447 unless it is authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-2-447.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board, in which selected directors who are parties may participate; or

(d) by the members of a mutual benefit corporation. However, directors who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

(4) A director of a public benefit corporation may not be indemnified until 20 days after the effective date of written notice to the attorney general of the proposed indemnification.

History: En. Sec. 106, Ch. 411, L. 1991.

35-2-452. Indemnification of officers, employees, and agents. Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-2-448 and is entitled to apply for court-ordered indemnification under 35-2-450 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-2-446 through 35-2-454 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 107, Ch. 411, L. 1991.

35-2-453. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under 35-2-447 or 35-2-448.

History: En. Sec. 108, Ch. 411, L. 1991.

35-2-454. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its members or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-2-446 through 35-2-454. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(2) Sections 35-2-446 through 35-2-454 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 109, Ch. 411, L. 1991.

Part 5

Members — Delegates — Voting

35-2-501 through 35-2-509. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-501. En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-502. En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.

35-2-503. En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.

35-2-504. En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.

35-2-505. En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-506. En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-507. En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.

35-2-508. En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).

35-2-509. En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.

35-2-510. Admission. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without his consent.

History: En. Sec. 39, Ch. 411, L. 1991.

Cross-References

Survival of remedy after dissolution, 35-2-726, 35-2-727.

35-2-511. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration determined by the board.

History: En. Sec. 40, Ch. 411, L. 1991.

35-2-512. No requirement of members. A corporation is not required to have members.

History: En. Sec. 41, Ch. 411, L. 1991.

35-2-513. Differences in rights and obligations of members. All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

History: En. Sec. 42, Ch. 411, L. 1991.

35-2-514. Transfers. (1) Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation may not transfer a membership or any right arising from a membership.

(2) A member of a public benefit or religious corporation may not transfer a membership or any right arising from a membership.

(3) When transfer rights have been provided, a restriction on them is not binding on a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

History: En. Sec. 43, Ch. 411, L. 1991.

35-2-515 reserved.

35-2-516. Member's liability to third parties. A member of a corporation is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the corporation.

History: En. Sec. 44, Ch. 411, L. 1991.

35-2-517. Member's liability for dues, assessments, and fees. A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

History: En. Sec. 45, Ch. 411, L. 1991.

35-2-518. Creditor's action against member. (1) A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless further proceeding would be useless.

(2) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

History: En. Sec. 46, Ch. 411, L. 1991.

35-2-519. Resignation. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

History: En. Sec. 47, Ch. 411, L. 1991.

35-2-520. Termination, expulsion, and suspension. (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) A written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.

History: En. Sec. 48, Ch. 411, L. 1991.

35-2-521 reserved.

35-2-522. Purchase of memberships. (1) A public benefit corporation or religious corporation may not purchase any of its memberships or any right arising from membership.

(2) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment may not be made in violation of 35-2-1401 and 35-2-1402.

History: En. Sec. 49, Ch. 411, L. 1991.

35-2-523 reserved.

35-2-524. Delegates. (1) A corporation may provide in its articles or bylaws for delegates who have some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) calling, noticing, holding, and conducting meetings of delegates; and

(c) carrying on corporate activities during and between meetings of delegates.

History: En. Sec. 57, Ch. 411, L. 1991.

35-2-525 reserved.

35-2-526. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office.

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) If the corporation has 50 or fewer members and if permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 58, Ch. 411, L. 1991.

35-2-527. Special meeting. (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to 35-2-530 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to 35-2-530.

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by 35-2-530 may be conducted at a special meeting of members.

History: En. Sec. 59, Ch. 411, L. 1991.

35-2-528. Court-ordered meeting. (1) The district court for the judicial district of the county where a corporation's principal office is located, or, if the principal office is not located in this state, where its registered office is located may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

History: En. Sec. 60, Ch. 411, L. 1991.

35-2-529. Action by written consent. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least 80% of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least 80% of the voting power, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-2-528 or 35-2-532, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document filed with the secretary of state.

(4) Written notice of member approval pursuant to this section must be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section is effective 10 days after written notice is given.

History: En. Sec. 61, Ch. 411, L. 1991.

35-2-530. Notice of meeting. (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection (3)(b) must be given as specified in subsection (3).

(3) Notice is fair and reasonable if:

(a) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not less than 10 days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date;

(b) notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under 35-2-223, 35-2-230, 35-2-418, 35-2-452, 35-2-611, 35-2-617, 35-2-720, or 35-2-721; and

(c) notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-2-532, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting.

History: En. Sec. 62, Ch. 411, L. 1991.

35-2-531. Waiver of notice. (1) A member may waive a notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

History: En. Sec. 63, Ch. 411, L. 1991.

35-2-532. Record date — determining members entitled to notice and vote. (1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members are entitled to notice of the meeting:

(a) at the close of business on the business day preceding the day on which notice is given; or

(b) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If a record date is not fixed, members are entitled to exercise the rights at the close of business on the day on which the board adopts the resolution relating to it or 60 days prior to the date of other action, whichever is later.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

History: En. Sec. 64, Ch. 411, L. 1991.

35-2-533. Action by written ballot. (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

History: En. Sec. 65, Ch. 411, L. 1991.

35-2-534 reserved.

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910 to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office or, if the principal office is not located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

History: **En. Sec. 66, Ch. 411, L. 1991.**

35-2-536. Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote is divided on a pro rata basis.

History: **En. Sec. 67, Ch. 411, L. 1991.**

35-2-537. Quorum requirements. (1) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, 10% of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

History: **En. Sec. 68, Ch. 411, L. 1991.**

35-2-538. Voting requirements. (1) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, if they are a majority of the required quorum, is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

History: **En. Sec. 69, Ch. 411, L. 1991.**

35-2-539. Proxies. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent

authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) attending any meeting and voting in person; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment.

History: En. Sec. 70, Ch. 411, L. 1991.

35-2-540. Cumulative voting for directors — exception. (1) If the articles or bylaws provide for cumulative voting by members, members may so vote by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes. If one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of 35-2-421 are met unless the votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted, and if the entire number of directors authorized at the time of the director's most recent election were then being elected.

(4) Members may not cumulatively vote if the directors and members are identical.

History: En. Sec. 71, Ch. 411, L. 1991.

35-2-541. Other methods of electing directors. A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(1) on the basis of chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

History: En. Sec. 72, Ch. 411, L. 1991.

35-2-542. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed purports to be the name of at least one of the coholders; and

(ii) the person signing appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: En. Sec. 73, Ch. 411, L. 1991.

35-2-543. Voting agreements. (1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Voting agreements may be valid for a period of up to 10 years. For public benefit corporations, voting agreements must have a reasonable purpose consistent with the corporation's public or charitable purposes.

(2) A voting agreement created under this section is specifically enforceable.

History: En. Sec. 74, Ch. 411, L. 1991.

Part 6

Merger, Consolidation, and Sale of Assets

35-2-601 through 35-2-607. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-601. En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.

35-2-602. En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.

35-2-603. En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.

35-2-604. En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341; amd. Sec. 42, Ch. 131, L. 1983.

35-2-605. En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.

35-2-606. En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.

35-2-607. En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.

35-2-608. Approval of plan of merger. (1) Subject to the limitations set forth in 35-2-609, one or more nonprofit corporations may merge into a business or nonprofit corporation if the plan of merger is approved as provided in 35-2-610.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) the terms and conditions of the planned merger;

(c) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(d) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) other provisions relating to the planned merger.

History: En. Sec. 123, Ch. 411, L. 1991; amd. Sec. 5, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 249 near beginning of (1) substituted "one or more nonprofit" for "profit".

35-2-609. Limitations on mergers by public benefit or religious corporations. (1) Without the prior approval of the district court for the judicial district in which the corporation's registered office is located, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

(a) a public benefit corporation or religious corporation;

(b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;

(c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or

(d) a business or mutual benefit corporation, provided that:

(i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and

(iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

History: En. Sec. 124, Ch. 411, L. 1991.

35-2-610. Action on plan by board, members, and third persons. (1) Unless this chapter, the articles, the bylaws, or the board of directors or members, acting pursuant to subsection (3), require a greater vote or voting by class to be adopted, a plan of merger must be approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger and the members may condition their approval of the merger on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the

proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under 35-2-224 or 35-2-231. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if no procedure is set forth, in the manner determined by the board of directors.

History: En. Sec. 125, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

35-2-611. Articles of merger. After a plan of merger is approved by the board of directors and, if required by 35-2-610, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger setting forth:

(1) the plan of merger;

(2) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) (i) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class; and

(ii) a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) if approval of the plan by some person or persons other than the members or the board is required pursuant to 35-2-610(1)(c), a statement that the approval was obtained.

History: En. Sec. 126, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-612. Effect of merger. When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject prior to the merger;

(3) the surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) the articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

History: En. Sec. 127, Ch. 411, L. 1991.

35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation is considered to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

History: En. Sec. 128, Ch. 411, L. 1991.

Cross-References

Withdrawal of foreign corporation, 35-2-831.

Fees, 35-2-1003.

35-2-614. Bequests, devises, and gifts. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger inures to the surviving corporation unless the will or other instrument specifically provides otherwise.

History: **En. Sec. 129, Ch. 411, L. 1991.**

35-2-615 reserved.

35-2-616. Sale of assets in regular course of activities — mortgage of assets. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property, whether or not in the usual and regular course of its activities.

(2) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (1) is not required.

(3) Unless the articles provide otherwise, approval of a transaction described in subsection (1)(a) is required by a vote of a majority of the directors in office at the time the transaction is approved.

History: **En. Sec. 130, Ch. 411, L. 1991.**

Cross-References

Notice of members' meetings, 35-2-530.

35-2-617. Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is approved as required by subsection (2).

(2) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) by the board;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) A public benefit corporation or religious corporation must give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors.

History: En. Sec. 131, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

Part 7
Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-2-701 through 35-2-706. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-701. En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

35-2-702. En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.

35-2-703. En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.

35-2-704. En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.

35-2-705. En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349; amd. Sec. 43, Ch. 131, L. 1983.

35-2-706. En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350; amd. Sec. 44, Ch. 131, L. 1983.

35-2-707 through 35-2-710 reserved.

35-2-711 through 35-2-719. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-711. En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354; amd. Sec. 153, Ch. 575, L. 1981.

35-2-712. En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.

35-2-713. En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.

35-2-714. En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.

35-2-715. En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.

35-2-716. En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.

35-2-717. En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.

35-2-718. En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.

35-2-719. En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.

35-2-720. Dissolution by incorporators or directors and third persons. (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: En. Sec. 134, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

35-2-721. Dissolution by directors, members, and third persons. (1) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (1)(c), require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing, by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the

proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: En. Sec. 135, Ch. 411, L. 1991.

35-2-722. Notices to the attorney general. (1) A public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

History: En. Sec. 136, Ch. 411, L. 1991.

35-2-723. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) a statement that dissolution was approved by a sufficient vote of the board;

(d) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(e) if approval by members was required:

(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) (A) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class; and

(B) a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(f) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-721(1)(c), a statement that the approval was obtained; and

(g) if the corporation is a public benefit or religious corporation, that the notice to the attorney general required by 35-2-722(1) has been given.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 137, Ch. 411, L. 1991.

Cross-References

Filing fees, 35-2-1003.

Appeal from refusal to file, 35-2-1110.

35-2-724. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if member or third person action was required to revoke the dissolution, the information required by 35-2-723(1)(e) and (1)(f).

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may resume carrying on its activities as if dissolution had never occurred.

History: En. Sec. 138, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

35-2-725. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(a) preserving and protecting its assets and minimizing its liabilities;

(b) discharging or making provision for discharging its liabilities and obligations;

(c) disposing of its properties that will not be distributed in kind;

(d) returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance in accordance with the condition;

(e) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(f) if the corporation is a public benefit corporation or religious corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(i) to one or more persons described in section 501(c)(3) of the Internal Revenue Code; or

(ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations or religious corporations;

(g) if the corporation is a mutual benefit corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it does not have members, to those persons whom the corporation holds itself out as benefitting or serving; and

(h) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in part 4 of this chapter;

(c) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(d) prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) terminate the authority of the registered agent.

History: En. Sec. 139, Ch. 411, L. 1991.

Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Fees, 35-2-1003.

Appeal from refusal to file, 35-2-1110.

35-2-726. Known claims against dissolved corporation. (1) A dissolved corporation shall dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History: En. Sec. 140, Ch. 411, L. 1991.

35-2-727. Unknown claims against dissolved corporations. (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation, its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under this section or 35-2-726:

(a) against the dissolved corporation, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law.

History: En. Sec. 141, Ch. 411, L. 1991.

35-2-728. Grounds for judicial dissolution. (1) The district court may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(b) in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, except as provided in the articles or bylaws of a religious corporation, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have or would otherwise have expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation or religious corporation and is no longer able to carry out its purposes;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) there are reasonable alternatives to dissolution;

(b) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(c) dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

History: En. Sec. 142, Ch. 411, L. 1991.

Cross-References

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-2-729. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in 35-2-728 lies in the judicial district for the county where a corporation's principal office or, if the principal office is not located in this state, the county where its registered office is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation shall give written notice of the proceeding to the attorney general who may intervene.

History: En. Sec. 143, Ch. 411, L. 1991.

35-2-730. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a public benefit corporation or mutual benefit corporation may appoint one or more receivers to wind up and liquidate the affairs of the corporation or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint, as a receiver or custodian, an individual authorized to transact business in this state or a domestic or foreign business or nonprofit corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may, if authorized by the court, dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state; and

(b) the custodian may exercise all the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its members, and its creditors.

(5) From time to time during the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

History: En. Sec. 144, Ch. 411, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.

Suretyship, Title 28, ch. 11, part 4.

35-2-731. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-2-728 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with 35-2-725 and the notification of its claimants in accordance with 35-2-726 and 35-2-727.

History: En. Sec. 145, Ch. 411, L. 1991.

35-2-732. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant, member, or other person as his representative that amount or property.

History: **En. Sec. 146, Ch. 411, L. 1991.**

Part 8
Foreign Corporations

35-2-801 through 35-2-819. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-801. En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-802. En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-803. En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.

35-2-804. En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.

35-2-805. En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365; amd. Sec. 7, Ch. 456, L. 1983.

35-2-806. En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.

35-2-807. En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367; amd. Sec. 45, Ch. 131, L. 1983.

35-2-808. En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368; amd. Sec. 46, Ch. 131, L. 1983.

35-2-809. En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.

35-2-810. En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375; amd. Sec. 47, Ch. 131, L. 1983.

35-2-811. En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.

35-2-812. En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371; amd. Sec. 48, Ch. 131, L. 1983.

35-2-813. En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.

35-2-814. En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.

35-2-815. En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.

35-2-816. En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.

35-2-817. En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377; amd. Sec. 49, Ch. 131, L. 1983.

35-2-818. En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.

35-2-819. En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379; amd. Sec. 8, Ch. 456, L. 1983.

35-2-820. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property:

(i) that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition; or

(ii) that does not produce income or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

History: En. Sec. 147, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-821. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation, its successor, or its assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation, its successor, or its assignee obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History: En. Sec. 148, Ch. 411, L. 1991.

Cross-References

Fee for certificate, 35-2-1003.

35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the street address and, if different, the mailing address of its principal office;

(e) the street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business or home addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: En. Sec. 149, Ch. 411, L. 1991.

35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) the state or country of its incorporation; or

(d) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 150, Ch. 411, L. 1991.

35-2-824. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of a similar character and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of a similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 151, Ch. 411, L. 1991.

35-2-825 reserved.

35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823.

History: En. Sec. 152, Ch. 411, L. 1991; amd. Sec. 176, Ch. 411, L. 1991; amd. Sec. 86, Ch. 120, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 120 in (2)(e) inserted reference to limited liability company name.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trademarks and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1031.

Nonprofit corporation, corporate name, 35-2-305.

Fees, 35-2-1003.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-827. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office with the same address as that of its registered agent; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose office is identical with the registered office;

(b) a domestic business or nonprofit corporation whose office is identical with the registered office; or

(c) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

History: En. Sec. 153, Ch. 411, L. 1991.

Cross-References

Agency, Title 28, ch. 10.

35-2-828. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the foreign corporation;

(b) the street address and, if different, the mailing address of its current registered office;

(c) if the current registered office is to be changed, the street address and, if different, the mailing address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: En. Sec. 154, Ch. 411, L. 1991.

35-2-829. Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 155, Ch. 411, L. 1991.

35-2-830. Service of process on foreign corporations. Service of process on a foreign corporation must be effected upon the persons and in the manner provided for by the Montana Rules of Civil Procedure.

History: En. Sec. 156, Ch. 411, L. 1991.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on him under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address.

History: En. Sec. 157, Ch. 411, L. 1991.

35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state under 35-2-828 or 35-2-829 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued, within 90 days of the change, resignation, or discontinuance;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, which certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.

History: En. Sec. 158, Ch. 411, L. 1991.

35-2-833. Procedure for and effect of revocation. (1) The secretary of state, upon determining that one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall mail to the foreign corporation written notice of that determination under 35-2-830.

(2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under 35-2-830.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after mailing the notice or after service of the notice is perfected under 35-2-830, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 159, Ch. 411, L. 1991; amd. Sec. 6, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 249 in (1) and in two places in (3) substituted requirement that Secretary of State mail written notice of the determination for former requirement that the determination be served on the foreign corporation pursuant to 35-2-830.

Cross-References

Appeal of failure to file certificate, 35-2-1110.

35-2-834. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court for the first judicial district within 30 days after the service of the certificate of revocation is perfected under 35-2-830. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 160, Ch. 411, L. 1991.

Part 9

Annual Report — Corporate Records

35-2-901. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381; amd. Sec. 2, Ch. 153, L. 1989.

35-2-902. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.

35-2-903. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.

35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the address of its registered office and the name of its registered agent at the office in this state;

(c) the address of its principal office;

(d) the names and business or residence addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 168, Ch. 411, L. 1991.

35-2-905 reserved.

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

History: En. Sec. 161, Ch. 411, L. 1991; amd. Sec. 57, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (5)(e) substituted reference to members for reference to shareholders.

35-2-907. Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice at least 5

business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to 35-2-910, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) only if:

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) the records are directly connected with this purpose.

(4) This section does not affect:

(a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

History: En. Sec. 162, Ch. 411, L. 1991.

35-2-908. Scope of inspection rights. (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under 35-2-907 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under 35-2-907(2)(c) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

History: En. Sec. 163, Ch. 411, L. 1991.

35-2-909. Court-ordered inspection. (1) If a corporation does not allow a member who complies with 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district court, for the judicial district of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with 35-2-907(2) and (3) may apply to the district court, for the judicial district of the county where the corporation's principal office or, if the principal office is not located in this state, the county where its registered office is located for an order to

permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

History: En. Sec. 164, Ch. 411, L. 1991.

35-2-910. Limitations on use of membership list. (1) Without consent of the board, a membership list or any part of it may not be obtained or used by a person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of the provisions of subsection (1), without the consent of the board a membership list or any part of it may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.

History: En. Sec. 165, Ch. 411, L. 1991.

35-2-911. Financial statements for members. Upon the written request of any member of the corporation, the corporation shall mail to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations.

History: En. Sec. 166, Ch. 411, L. 1991.

35-2-912. Report of indemnification to members. If a corporation indemnifies or advances expenses to a director under 35-2-447 through 35-2-450 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

History: En. Sec. 167, Ch. 411, L. 1991.

Part 10

Fees and Charges

35-2-1001. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979; amd. Sec. 7, Ch. 119, L. 1985.

35-2-1002. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.

35-2-1003. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall by rule establish fees for copying documents, priority handling, transmitting, or filing facsimile copies and for providing computer-generated information.

(3) The fees presented under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 7, Ch. 411, L. 1991.

Cross-References

Fees relating to business corporations, 35-1-1206.

Certification of existence, 35-2-1112.

Fees relating to limited partnerships, 35-12-521.

Part 11
Secretary of State

35-2-1101 through 35-2-1106. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-1101. En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.

35-2-1102. En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.

35-2-1103. En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.

35-2-1104. En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).

35-2-1105. En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.

35-2-1106. En. Sec. 1, Ch. 256, L. 1981.

35-2-1107. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: En. Sec. 15, Ch. 411, L. 1991.

35-2-1108. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

(3) The secretary of state may by rule prescribe and furnish on request forms or computer formats for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

History: En. Sec. 6, Ch. 411, L. 1991.

35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title,

and the date and the time of receipt, on the original, the copy of the document, and the receipt for the filing fee. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, together with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason or reasons for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History: En. Sec. 10, Ch. 411, L. 1991.

35-2-1110. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 11, Ch. 411, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-2-1111. Evidentiary effect of copy of filed document. A certificate attached to a copy of a document, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 12, Ch. 411, L. 1991.

Cross-References

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Admissibility of duplicates — copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

35-2-1112. Certificate of existence. (1) A person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-2-904 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

History: En. Sec. 13, Ch. 411, L. 1991.

Part 12

Reinstatement (Repealed. Sec. 174, Ch. 411, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

35-2-1201. En. Sec. 2, Ch. 256, L. 1981; amd. Sec. 50, Ch. 131, L. 1983; amd. Sec. 29, Ch. 174, L. 1983.

35-2-1202. En. Sec. 3, Ch. 256, L. 1981.

35-2-1203. En. Sec. 4, Ch. 256, L. 1981.

Part 13

Derivative Actions

35-2-1301. Standing. (1) For purposes of this part, "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in 35-2-1307, in the right of a foreign corporation.

(2) A derivative proceeding may be commenced or maintained by a complainant who is:

(a) a director at the time of the bringing of the proceeding; or

(b) a member or members having 5% or more of the voting power or by 50 members, whichever is less. Each member must be a member at the time of the proceeding, including the time of the complained act or omission.

History: En. Sec. 50, Ch. 411, L. 1991.

35-2-1302. Demand. A complainant may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action;

(2) 90 days have expired from the date the demand was made, unless the complainant has earlier been notified that the demand has been rejected by

the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period; and

(3) the complainant has notified the attorney general prior to commencing a proceeding if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. Notification of the attorney general must be made by mailing the attorney general a copy of the complaint.

History: En. Sec. 51, Ch. 411, L. 1991.

35-2-1303. Stay of proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

History: En. Sec. 52, Ch. 411, L. 1991.

35-2-1304. Dismissal. (1) The court shall dismiss a derivative proceeding on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a defendant against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a complainant, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or, that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the complainant has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation.

In this case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: En. Sec. 53, Ch. 411, L. 1991.

35-2-1305. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the members affected.

History: En. Sec. 54, Ch. 411, L. 1991.

35-2-1306. Payment of expenses. On termination of the derivative proceeding, the court may order:

(1) the corporation to pay the complainant's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) the complainant to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

History: En. Sec. 55, Ch. 411, L. 1991.

35-2-1307. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matter covered by this part is governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for 35-2-1303, 35-2-1305, and 35-2-1306.

History: En. Sec. 56, Ch. 411, L. 1991.

Part 14

Distributions

35-2-1401. Prohibited distributions. Except as authorized by 35-2-1402, a corporation may not make any distributions.

History: En. Sec. 132, Ch. 411, L. 1991.

35-2-1402. Authorized distributions. (1) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(a) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the corporation's total assets would at least equal the sum of its total liabilities.

(2) Corporations may make distributions upon dissolution in conformity with part 7 of this chapter.

History: En. Sec. 133, Ch. 411, L. 1991.

CHAPTER 3

RELIGIOUS CORPORATIONS SOLE

Part 1 — General

35-3-101. Short title.
35-3-102. Applicability.
35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred.

Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
35-3-202. Articles of incorporation.
35-3-203. Effect of issuance of certificate of incorporation.
35-3-204. Unauthorized assumption of corporate powers — liability.
35-3-205. Powers of corporation sole.
35-3-206. Amendment of articles of incorporation.
35-3-207. Succession.
35-3-208. Board of advisors or consultors — interim powers.
35-3-209. Annual report.

Chapter Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Part 1

General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".

History: En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).

Cross-References

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Nonprofit foreign corporations, Title 35, ch. 2, part 8.

Management of institutional funds, Title 72, ch. 30.

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.

Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Part 2
Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.

35-3-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which he presides or over which his jurisdiction extends and the facts authorizing such incorporation;

(e) the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules or discipline of such religious denomination, society, or church, shall be filled;

(f) any provisions, not inconsistent with law, which the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its initial registered office and the name of its initial registered agent at such address;

(h) the name and address of the incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles shall be verified by affidavit of the incorporator, and he shall also file the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder,

duly attested, and his affidavit that the same is a true copy or translation shall be deemed as sufficient attestation thereof.

History: En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404.

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust hereinafter mentioned, shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, provided that all such property shall be in trust for the use, purpose, and benefit of such religious denomination, society, or church for which and in whose behalf such corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other

obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or his successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Exempt securities, 30-10-104.

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments thereto or under this chapter, such corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

(2) Such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such

amendment and the date upon which said amendment was promulgated, and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

History: **En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410.**

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of his transfer or removal therefrom by the person or body having the authority to remove him, his successor in office shall succeed to the powers, rights, and obligations of the office and shall become vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) Succession shall be effected when the successor shall file in the office of the secretary of state the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed sufficient attestation thereof.

History: **En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407.**

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: **En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.**

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in Montana and the name of its registered agent in Montana at that address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.

History: **En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409; amd. Sec. 3, Ch. 153, L. 1989.**

Cross-References

Corporations subject to provision, 35-3-102.

CHAPTER 4

MONTANA PROFESSIONAL CORPORATION ACT

Part 1 — General

35-4-101 through 35-4-107. Repealed.
35-4-108. Short title.
35-4-109. Definitions.
35-4-110. Application to existing corporations.
35-4-111. Application of the Montana Business Corporation Act.

Part 2 — Organization and Regulation

35-4-201 through 35-4-204. Repealed.
35-4-205. Purposes of corporation.
35-4-206. Corporate name.
35-4-207. Directors and officers.
35-4-208. Filing of articles with licensing authority.
35-4-209. Annual reports and statements.
35-4-210 reserved.
35-4-211 through 35-4-216. Repealed.

Part 3 — Shares and Shareholders

35-4-301. Issuance and transfer of shares.
35-4-302. Corporation's right to acquire its own shares.
35-4-303. Proxies and voting trusts.
35-4-304 through 35-4-310 reserved.
35-4-311. Death or disqualification of a shareholder.
35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate.

Part 4 — Operation

35-4-401. General powers.
35-4-402. Prohibited activities.
35-4-403. Rendering services.
35-4-404. Responsibility for services.
35-4-405. Relationship to clients or patients — privileged communications.
35-4-406 through 35-4-410 reserved.
35-4-411. Admission of foreign professional corporations — application — revocation.

Part 5 — Reorganization and Dissolution

35-4-501. Merger and consolidation.
35-4-502. Termination of all professional services.
35-4-503. Involuntary dissolution.

Chapter Cross-References

Professional and occupational licensing, Title 37.

Part 1
General

35-4-101 through 35-4-107. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-101. En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.

35-4-102. En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.

35-4-103. En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.

35-4-104. En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.

35-4-105. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-106. En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.

35-4-107. En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.

35-4-108. Short title. This chapter may be cited as the "Montana Professional Corporation Act".

History: En. Sec. 1, Ch. 399, L. 1983.

Cross-References

Short title, 35-1-112.

35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation.

History: En. Sec. 2, Ch. 399, L. 1983.

Cross-References

Professions and Occupations, Title 37.

35-4-110. Application to existing corporations. (1) This chapter applies to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to this chapter by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendments of its corporate name or purposes as are required to comply with this chapter.

History: En. Sec. 3, Ch. 399, L. 1983.

35-4-111. Application of the Montana Business Corporation Act. The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with this chapter.

History: En. Sec. 4, Ch. 399, L. 1983.

Part 2
Organization and Regulation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-4-201 through 35-4-204. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-201. En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112; amd. Sec. 154, Ch. 575, L. 1981.

35-4-202. En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.

35-4-203. En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.

35-4-204. En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.

35-4-205. Purposes of corporation. Professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.

History: En. Sec. 6, Ch. 399, L. 1983.

35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) (a) except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

History: En. Sec. 12, Ch. 399, L. 1983; amd. Sec. 87, Ch. 120, L. 1993; amd. Sec. 7, Ch. 249, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 120 in (3) inserted reference to limited liability company name.

Chapter 249 at beginning of (1)(a) inserted exception clause; inserted (1)(b) allowing the name of a foreign corporation to contain the words "professional services" or "P.S."; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Assumed business names, trademarks, and related rights, Title 30, ch. 13.

Service of process on foreign corporation, 35-1-1034.

Professions and Occupations, Title 37.

35-4-207. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

History: En. Sec. 13, Ch. 399, L. 1983.

35-4-208. Filing of articles with licensing authority. No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in this chapter restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

History: En. Sec. 5, Ch. 399, L. 1983.

35-4-209. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 23, Ch. 399, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

35-4-210 reserved.

35-4-211 through 35-4-216. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-211. En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

Part 3

Shares and Shareholders

35-4-301. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

History: En. Sec. 14, Ch. 399, L. 1983.

Cross-References

Duties of boards, 37-1-131.

35-4-302. Corporation's right to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

History: En. Sec. 15, Ch. 399, L. 1983.

35-4-303. Proxies and voting trusts. No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

History: En. Sec. 18, Ch. 399, L. 1983.

35-4-304 through 35-4-310 reserved.

35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6

months after such death or 30 days after such disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value thereof as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within such other period as the parties fix by agreement and upon surrender of the certificate or certificates representing such shares. Upon payment the transferor ceases to have any interest in such shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation must within the next 30 days file a petition in the district court of the county in this state where the registered office of the corporation is located, requesting that the fair value of such shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of his shares as of the date of death, disqualification, or transfer and upon payment of the judgment must surrender to the corporation the certificates representing the shares. The court may in its discretion order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered therefor or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its

books and the disqualified person has no further interest as a shareholder other than his right under this section to payment for such shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

History: En. Sec. 16, Ch. 399, L. 1983.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate. A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;
(2) the amendments adopted;
(3) the date of adoption of the amendments; and
(4) the number of shares outstanding.

History: En. Sec. 17, Ch. 399, L. 1983.

Part 4

Operation

35-4-401. General powers. (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

History: En. Sec. 8, Ch. 399, L. 1983.

35-4-402. Prohibited activities. A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

History: En. Sec. 7, Ch. 399, L. 1983.

35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

History: En. Sec. 9, Ch. 399, L. 1983.

35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

History: En. Sec. 10, Ch. 399, L. 1983.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Disciplinary authority of boards — injunctions, 37-1-136.

35-4-405. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

History: En. Sec. 11, Ch. 399, L. 1983.

Cross-References

Privileges, Title 26, ch. 1, part 8.

35-4-406 through 35-4-410 reserved.

35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) No foreign professional corporation is required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

History: En. Sec. 22, Ch. 399, L. 1983.

Part 5

Reorganization and Dissolution

35-4-501. Merger and consolidation. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with this chapter.

History: En. Sec. 19, Ch. 399, L. 1983.

35-4-502. Termination of all professional services. If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to this chapter.

History: En. Sec. 20, Ch. 399, L. 1983.

35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

History: En. Sec. 21, Ch. 399, L. 1983.

CHAPTER 5

BUSINESS TRUSTS

Part 1 — General

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.
35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Chapter Cross-References
Agency, Title 28, ch. 10.
Trust code, Title 72, ch. 33 through 36.

Part 1

General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.

Cross-References
General corporate law — applicability, Title 35, ch. 1.

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.

Part 2
Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1028 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2); amd. Sec. 194, Ch. 368, L. 1991.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Service of process on foreign corporation, 35-1-1034.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay such taxes and fees as are imposed by the laws, ordinances, and regulations of this state and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith.

History: En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507.

Cross-References

Corporate license tax, Title 15, ch. 31, part 1.

Corporate income tax, generally, Title 15, ch. 31, part 4.

CHAPTER 6

INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement

35-6-201. Reinstatement of dissolved corporation.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Part 1

Dissolution by Secretary of State

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and 35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate, is applicable to liquidate the property and assets if necessary.

History: En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979; amd. Secs. 183, 195, Ch. 368, L. 1991; amd. Sec. 171, Ch. 411, L. 1991.

Part 2
Reinstatement

35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979; amd. Sec. 51, Ch. 131, L. 1983; amd. Sec. 30, Ch. 174, L. 1983; amd. Sec. 196, Ch. 368, L. 1991; amd. Sec. 172, Ch. 411, L. 1991.

Cross-References

State tax clearance certificate, 35-1-944.

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

CHAPTER 7

RESERVED

CHAPTER 8

MONTANA LIMITED LIABILITY COMPANY ACT

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Chapter Compiler's Comments

Source — Comment on Montana Act: All sections of Title 35, ch. 8, the Montana Limited Liability Company Act, unless otherwise specified, are based on the Prototype Limited Liability Company Act (July 16, 1992) drafted by the American Bar Association's Subcommittee on Limited Liability Companies of the Partnerships and Unincorporated Business Organizations Committee. The Montana Limited Liability Subcommittee believes that the Commentary to the ABA Prototype will be of substantial help in interpreting the Montana Limited Liability Company Act.

As a general rule, a Montana LLC should be considered as a separate entity. The drafters agree with the following comments accompanying the ABA Prototype Act:

"The Committee has concluded that an LLC should be generally considered a separate entity for all purposes rather than merely an aggregate of individual members. Although this decision was made, the term entity was not included in the definition of limited liability company. Thus, for example, the Prototype makes clear that the entity itself owns property (see §701(A)) [35-8-701] and engaged in litigation (see §1101) [35-8-1101]. This should prevent the confusion resulting in partnerships from the fact that the Uniform Partnership Act does not explicitly characterize the partnership, and contains both aggregate features, such as technical dissolution on dissociation of a member, and entity features, such as the partnership's power to take title to property."

The failure of a limited liability company to observe the formalities customarily followed by business corporations or requirements relating to the exercise of its powers or management of its business and affairs is not a ground for imposing personal liability on the members for liabilities of the limited liability company. This section prevents courts from piercing the limited liability company "veil" merely as a result of failure to follow normal formalities required of a corporation. See Keatinge et al., The Limited Liability Company: A Study of the Emerging Entity, 47 Bus. Law. 375, 446 (1992). See also Gazur and Goff, Assessing the Limited Liability Company, 41 Case Western Res. L. Rev. 401-403 (1991). Of course, the court may still pierce the limited liability company veil (if piercing the veil is necessary to prevent fraud or necessary to achieve equity). See, e.g., Jody J. Brewster comment, Piercing the Corporate Veil in Montana, Mont. L. Rev. (1983)."

1993 Statement of Intent: The statement of intent attached to Ch. 120, L. 1993, provided: "A statement of intent is required for this bill because the secretary of state is authorized to adopt rules prescribing forms and establishing fees. The legislature intends that fees be commensurate with the cost of the services provided. It is further the intent of the legislature that the secretary of state make the forms consistent with existing forms used for corporate and other business entities, when practical and applicable, and that the new forms be as easy to use as possible."

Part 1

General Provisions

35-8-101. Short title. This chapter may be cited as the "Montana Limited Liability Company Act".

History: En. Sec. 1, Ch. 120, L. 1993.

35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated.

(2) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(3) "Court" includes every court having jurisdiction in the case.

(4) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(5) "Event of dissociation" means an event that causes a person to cease to be a member, as provided in 35-8-802.

(6) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(7) "Foreign limited liability company" means an entity that is:

(a) an unincorporated association;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(8) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(9) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(10) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(11) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(12) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705.

(13) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(14) "Manager" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with 35-8-302.

(15) "Member" means a person who has been admitted to membership in a limited liability company as provided in 35-8-801 and who has not dissociated from the limited liability company.

(16) "Operating agreement" means an agreement, written or oral, as to the conduct of the business and affairs of a limited liability company that is binding upon all of the members.

(17) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(18) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(19) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(20) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(21) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(22) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

History: En. Sec. 2, Ch. 120, L. 1993.

35-8-103. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) Contests over names registered under this section are governed by 35-1-310.

History: En. Sec. 3, Ch. 120, L. 1993.

35-8-104. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

History: En. Sec. 4, Ch. 120, L. 1993.

35-8-105. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appoint-

ment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and 2 copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

History: En. Sec. 5, Ch. 120, L. 1993.

35-8-106. Purpose. (1) A limited liability company organized under 35-8-201 through 35-8-211 has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under 35-8-201 through 35-8-211 for any lawful purpose except for the purpose of banking or insurance.

History: En. Sec. 6, Ch. 120, L. 1993.

35-8-107. Powers. A limited liability company may:

(1) sue, be sued, complain, and defend in all courts;

(2) transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

(3) make contracts and guarantees, incur liabilities, and borrow money;

(4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) elect or appoint agents and define their duties and fix their compensation;

(10) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) indemnify and hold harmless any member, agent, or employee from and against any claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) cease its activities and dissolve;

(14) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

History: En. Sec. 7, Ch. 120, L. 1993.

Part 2

Formation

35-8-201. Formation. One or more persons may form a limited liability company by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred.

History: En. Sec. 8, Ch. 120, L. 1993.

35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) the latest date on which the limited liability company is to dissolve;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its resident agent at the registered office in this state;

(d) a statement of whether the limited liability company is to be managed by a manager or by its members;

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, the names and street addresses of the initial members;

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

History: En. Sec. 9, Ch. 120, L. 1993.

35-8-203. Amendment of articles of organization — restatement. (1) The articles of organization of a limited liability company are amended by filing articles of amendment with the secretary of state. The articles of amendment must set forth:

(a) the name of the limited liability company;

(b) the date the articles of organization were filed; and

(c) the amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the secretary of state, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state.

History: En. Sec. 10, Ch. 120, L. 1993.

35-8-204. Execution of documents. (1) Unless otherwise specified in this chapter, a document required by this chapter to be filed with or delivered to the secretary of state must be executed:

(a) by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the limited liability company is reserved to the members;

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.

History: En. Sec. 11, Ch. 120, L. 1993.

35-8-205. Filing with secretary of state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, the secretary of state shall, when all required filing fees have been paid:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.

History: En. Sec. 12, Ch. 120, L. 1993.

35-8-206. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are delivered to the secretary of state for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.

History: En. Sec. 13, Ch. 120, L. 1993.

35-8-207. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter, provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 14, Ch. 120, L. 1993.

35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) the last date upon which the limited liability company is to be dissolved;

(f) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 15, Ch. 120, L. 1993.

35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company has failed:

(a) for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change;

(b) for 140 days to file its annual report within the time required by law; or

(c) to remit any fees required by law.

(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1).

History: En. Sec. 16, Ch. 120, L. 1993.

35-8-210. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of 35-8-209;

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

History: En. Sec. 17, Ch. 120, L. 1993.

35-8-211. Fees for filing, copying, and services — rules. (1) The secretary of state shall establish by rule fees for filing documents as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the

services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 18, Ch. 120, L. 1993.

35-8-212. License fee. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing its articles of organization.

(2) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing an application for a certificate of authority to transact business.

History: En. Sec. 19, Ch. 120, L. 1993.

Part 3

Relations of Members and Managers to Persons Dealing With Limited Liability Company

35-8-301. Agency power of members and managers. (1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

History: En. Sec. 20, Ch. 120, L. 1993.

35-8-302. Admissions of members and managers. (1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by this chapter is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) an admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by this chapter, is evidence against the limited liability company; and

(b) the admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

History: En. Sec. 21, Ch. 120, L. 1993.

35-8-303. Limited liability company charged with knowledge of or notice to member or manager. (1) Except as provided in subsection (2), notice to a member of any matter relating to the business or affairs of the limited liability company and the knowledge of the member acting in the particular matter, acquired while a member or of which the member had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated it to the acting member operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) notice to a manager of any matter relating to the business or affairs of the limited liability company and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the manager had knowledge at the time of becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(b) notice to or knowledge of a member of a limited liability company while the member is acting solely in the capacity as a member is not notice to or knowledge of the limited liability company.

History: En. Sec. 22, Ch. 120, L. 1993.

35-8-304. Liability of members to third parties. A person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

History: En. Sec. 23, Ch. 120, L. 1993.

Part 4

Rights and Duties of Members and Managers

35-8-401. Management. (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business or affairs of the limited liability company is vested in the members. Subject to any provisions in the articles of organization, the operating agreement, or this chapter restricting or enlarging the management rights and duties of any person, group, or class of persons, the members may manage the affairs of the limited liability company and make all necessary decisions.

(2) If the articles of organization vest management of the limited liability company in one or more managers, the managers may manage the business or affairs of the limited liability company as provided in the articles of organization or operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, the managers:

(a) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of more than one-half of the members;

(b) need not be members of the limited liability company or natural persons; and

(c) unless they have been earlier removed or have earlier resigned, shall hold office until their successors are elected and qualified.

History: En. Sec. 24, Ch. 120, L. 1993.

35-8-402. Duties of members and managers. (1) Subject to contrary provision of articles of organization or an operating agreement, a member or manager is not liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or for failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the member or manager without the consent of a majority of the disinterested members or managers or other persons participating in the management of the business or affairs of the limited liability company from:

(a) any transaction connected with the conduct or winding up of the limited liability company; or

(b) any use by the member or manager of its property, including but not limited to confidential or proprietary information of the limited liability company or other matters entrusted to the member or manager as a result of the member's or manager's status as member or manager.

(3) A member who is not also a manager of a limited liability company in which management is vested in managers under 35-8-401 has no duty to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

History: En. Sec. 25, Ch. 120, L. 1993.

35-8-403. Voting. (1) Except as provided in the articles of organization, the operating agreement, or this chapter and subject to subsection (2), the affirmative vote, approval, or consent of more than one-half of the members, if management of the limited liability company is vested in the members, or of the managers or other persons vested with the management of the limited liability company, if the management of the limited liability company is vested in the managers or persons, is required to decide any matter connected with the business.

(2) Except as provided in writing in the articles of organization or the operating agreement, the affirmative vote, approval, or consent of all members is required to:

(a) amend the articles of organization or a written operating agreement; or

(b) authorize a member, manager, or other person to do any act on behalf of the limited liability company that contravenes the articles of organization or a written operating agreement, including any written provision of the articles of organization or a written operating agreement that expressly limits the purpose, business, or affairs of the limited liability company or its conduct.

History: En. Sec. 26, Ch. 120, L. 1993.

35-8-404. Limitation of liability and indemnification of members and managers. (1) Subject to subsection (2), the articles of organization or operating agreement may:

(a) eliminate or limit the personal liability of a member or a manager for monetary damages for breach of any duty provided for in 35-8-402; and

(b) provide for indemnification of the member or the manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because the individual is or was a member or a manager.

(2) A provision permitted under subsection (1) may not limit or eliminate the liability of a member or a manager for:

(a) the amount of a financial benefit received by a member or a manager to which the member or the manager is not entitled;

(b) an intentional infliction of harm by the member or the manager on the limited liability company or its members;

(c) an intentional violation of criminal law by the member or the manager; or

(d) an unlawful distribution by the member or the manager.

History: En. Sec. 27, Ch. 120, L. 1993.

35-8-405. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

History: En. Sec. 28, Ch. 120, L. 1993.

Part 5

Finance

35-8-501. Contributions to capital. An interest in a limited liability company may be issued in exchange for property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

History: En. Sec. 29, Ch. 120, L. 1993.

35-8-502. Liability for contribution. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise.

History: En. Sec. 30, Ch. 120, L. 1993.

35-8-503. Sharing of profits and losses. Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

History: En. Sec. 31, Ch. 120, L. 1993.

Part 6

Distributions

35-8-601. Sharing of distributions. Except as provided in 35-8-602 and 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to 35-8-403.

History: En. Sec. 32, Ch. 120, L. 1993.

35-8-602. Distributions on event of dissociation. Upon the occurrence of an event of dissociation under 35-8-802 that does not cause dissolution, a dissociating member is entitled to receive:

(1) any distribution to which the member is entitled under the articles of organization or the operating agreement; and

(2) if not otherwise provided in the articles of organization or the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based upon the member's right to share in distributions from the limited liability company.

History: En. Sec. 33, Ch. 120, L. 1993.

35-8-603. Distribution in kind. Except as provided in the articles of organization or the operating agreement:

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: En. Sec. 34, Ch. 120, L. 1993.

35-8-604. Distributions. (1) A distribution may not be made if, after giving effect to the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) the date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) if terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

History: En. Sec. 35, Ch. 120, L. 1993.

35-8-605. Liability upon wrongful distribution. (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with 35-8-604.

(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement.

History: En. Sec. 36, Ch. 120, L. 1993.

35-8-606. Right to distribution. Subject to 35-8-905, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

History: En. Sec. 37, Ch. 120, L. 1993.

Part 7

Ownership and Transfer of Property

35-8-701. Ownership of limited liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

History: En. Sec. 38, Ch. 120, L. 1993.

35-8-702. Transfer of real property. (1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under 35-8-301 unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the

instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) a member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

History: En. Sec. 39, Ch. 120, L. 1993.

35-8-703. Nature of membership interest. A membership interest is personal property.

History: En. Sec. 40, Ch. 120, L. 1993.

35-8-704. Assignment of membership interest. (1) Except as provided in writing in the articles of organization or an operating agreement:

(a) a membership interest is assignable in whole or in part;

(b) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(c) an assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member;

(d) until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise rights of a member, subject to the members' right to remove the assignor pursuant to 35-8-802(1)(c)(ii);

(e) until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(f) the assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(2) The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for the assignment or transfer of a membership interest represented by a certificate and make other provisions with respect to the certificates.

(3) Unless otherwise provided in the articles of organization or an operating agreement, the pledge or granting of a security interest, lien, or other encumbrance in or against any of the membership interest of a member is not an assignment and may not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

History: En. Sec. 41, Ch. 120, L. 1993.

35-8-705. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the membership interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a membership interest.

History: En. Sec. 42, Ch. 120, L. 1993.

35-8-706. Right of assignee to become member. (1) Except as otherwise provided in the articles of organization or a written operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers of and is subject to the restrictions and liabilities of a member under the articles of organization, an operating agreement, and this chapter. An assignee who becomes a member is liable for obligations of the assignor to make contributions and to return distributions under 35-8-502; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from the articles of organization or a written operating agreement.

(3) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to the limited liability company under 35-8-502.

(4) Except as otherwise provided in writing in the articles of organization or the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member and to have the power to exercise any rights of a member when the assignee becomes a member with respect to the assigned interest.

History: En. Sec. 43, Ch. 120, L. 1993.

Part 8

Admission and Withdrawal of Members

35-8-801. Admission of members. (1) Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in 35-8-704.

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company.

History: En. Sec. 44, Ch. 120, L. 1993.

35-8-802. Events of dissociation. (1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) the member withdraws by voluntary act from the limited liability company as provided in subsection (3);

(b) the member ceases to be a member of the limited liability company as provided in 35-8-706;

(c) the member is removed as a member:

(i) in accordance with the articles of organization or the operating agreement; or

(ii) subject to contrary written provisions in the articles of organization or the operating agreement, by an affirmative vote of a majority of the members who have not assigned their interests when the member assigns all the member's interest in the limited liability company;

(d) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, the member:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudicated as bankrupt or insolvent;

(iv) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding under subsection (1)(d); or

(vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of any substantial part of the member's properties;

(e) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time if:

(i) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed;

(ii) within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member or of any substantial part of the member's properties, the appointment is not vacated or stayed; or

(iii) within 90 days after the expiration of any stay, the appointment is not vacated;

(f) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member who is an individual:

(i) the member's death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate;

(g) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member who is a trustee or is acting as a member by virtue of being a trustee of a trust, the termination of the trust but not merely the substitution of a new trustee;

(h) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(i) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member that is a corporation, the filing of articles of dissolution, or the equivalent for the corporation, or involuntary dissolution and the lapse of 90 days after notice to the corporation of revocation without a reinstatement of its charter;

(j) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(k) if the limited liability company is a professional limited liability company, a member becomes a disqualified person.

(2) The members may provide in writing in the articles of organization or the operating agreement for other events that result in a person ceasing to be a member of the limited liability company.

(3) Unless the articles of organization or the operating agreement provides in writing that a member may not withdraw by voluntary act from a limited liability company, the member may withdraw at any time by giving 30 days' written notice to the other members or other notice required in the articles of organization or the operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the articles of organization or the operating agreement. If a member has the power to withdraw but the withdrawal violates a provision of the articles of organization or is a breach of the operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may:

(a) recover from the withdrawing member damages for violation of the articles of organization or for breach of the operating agreement, including the reasonable cost of obtaining replacement of the services the withdrawn member was obligated to perform;

(b) offset the damages against the amount otherwise distributable to the member; and

(c) pursue any other remedies provided for in the articles of organization or the operating agreement or otherwise available under applicable law.

History: En. Sec. 45, Ch. 120, L. 1993.

Part 9

Dissolution

35-8-901. Dissolution. A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(1) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement; or

(4) entry of a decree of judicial dissolution under 35-8-902.

History: En. Sec. 46, Ch. 120, L. 1993.

35-8-902. Judicial dissolution. On application by or for a member, a district court may order dissolution of a limited liability company, or other appropriate relief, when it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

History: En. Sec. 47, Ch. 120, L. 1993.

35-8-903. Winding up. (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under 35-8-304 to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

History: En. Sec. 48, Ch. 120, L. 1993.

35-8-904. Agency power of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

History: En. Sec. 49, Ch. 120, L. 1993.

35-8-905. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under 35-8-602 or 35-8-603;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under 35-8-602 or 35-8-603; and

(3) unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

History: En. Sec. 50, Ch. 120, L. 1993.

35-8-906. Articles of dissolution. Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:

(1) the name of the limited liability company;

(2) the date of filing of its articles of organization and all amendments to the articles;

(3) the reason for filing the articles of dissolution;

(4) the effective date of the articles of dissolution, which must be a date certain, if they are not to be effective upon the filing;

(5) any other information that the members or managers filing the articles determine necessary;

(6) the name of the agent or agents authorized to receive service of process after dissolution of the limited liability company; and

(7) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company.

History: En. Sec. 51, Ch. 120, L. 1993.

35-8-907. Revocation of dissolution. (1) A limited liability company may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the limited liability company;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized; and

(d) a statement of the action that was taken to revoke the dissolution.

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the limited liability company resumes carrying on its business as if dissolution had never occurred.

History: En. Sec. 52, Ch. 120, L. 1993.

35-8-908. Known claims against dissolved limited liability companies. (1) A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to 35-8-906 and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of dissolution pursuant to 35-8-906, by which the dissolved limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

History: En. Sec. 53, Ch. 120, L. 1993.

35-8-909. Unknown claims against dissolved limited liability companies. (1) Subject to 35-8-908, the dissolution of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under 35-8-908 or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.

History: En. Sec. 54, Ch. 120, L. 1993.

Part 10

Foreign Limited Liability Companies

35-8-1001. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

History: En. Sec. 55, Ch. 120, L. 1993.

35-8-1002. Consequences of transacting business without authority. (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

History: En. Sec. 56, Ch. 120, L. 1993.

35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the state or country under whose law it is organized;

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.,

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

History: **En. Sec. 57, Ch. 120, L. 1993.**

35-8-1004. Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

History: **En. Sec. 58, Ch. 120, L. 1993.**

35-8-1005. Resignation of registered agent of foreign limited liability company. (1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign limited liability company at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated and the registered office discontinued, if provided in the statement, 30 days after the date on which the statement was filed.

History: **En. Sec. 59, Ch. 120, L. 1993.**

35-8-1006. Change of registered office or registered agent of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent, or both, by delivering to the secretary of state, for filing, a statement of change setting forth:

(a) the foreign limited liability company's name;

(b) the street address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent;

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent are identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the registered agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the foreign limited liability company has been notified of the change.

History: En. Sec. 60, Ch. 120, L. 1993.

35-8-1007. Amended certificate of authority. (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its name;

(b) the period of its duration; or

(c) the state or country of its organization.

(2) The requirements of 35-8-1003 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 61, Ch. 120, L. 1993.

35-8-1008. Effect of certificate of authority. (1) A certificate of authority issued by the secretary of state authorizes a foreign limited liability company to transact business in this state subject to the right of the state to revoke the certificate as provided in this part.

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by this part, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) This part does not authorize the state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business in the state.

History: En. Sec. 62, Ch. 120, L. 1993.

35-8-1009. Name. A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of 35-8-103. If the name of a foreign limited liability company does not satisfy the requirements of 35-8-103, to obtain or maintain a certificate of authority:

(1) the foreign limited liability company may add the words "limited company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use in this state; or

(2) if its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the

requirements of 35-8-208 if it files the assumed business name with the secretary of state.

History: En. Sec. 63, Ch. 120, L. 1993.

35-8-1010. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company and the name of the state or country under whose law it is organized;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

History: En. Sec. 64, Ch. 120, L. 1993.

35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under 35-8-105 that its registered agent or registered office has changed,

that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

History: En. Sec. 65, Ch. 120, L. 1993.

35-8-1012. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-8-1011 for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

History: En. Sec. 66, Ch. 120, L. 1993.

35-8-1013. Appeal from revocation. (1) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 67, Ch. 120, L. 1993.

35-8-1014. Admission of foreign professional limited liability companies — application — revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under part 13 of this chapter; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its registered office in this state a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of part 13 of this chapter not inconsistent with this section.

History: En. Sec. 68, Ch. 120, L. 1993.

Part 11

Suits by and Against the Limited Liability Company

35-8-1101. Suits by and against limited liability company. Suit may be brought by or against a limited liability company in its own name.

History: En. Sec. 69, Ch. 120, L. 1993.

35-8-1102. Authority to sue on behalf of limited liability company. Except as otherwise provided in the articles of organization or the operating agreement, suit on behalf of the limited liability company may be brought in the name of the limited liability company by:

(1) any member or members of a limited liability company, whether or not the articles of organization vest management of the limited liability company in one or more managers who are authorized to sue by the vote of more than one-half of the members, unless the vote of all members is required under 35-8-403(2), provided that in determining the vote required under 35-8-403, the vote of a member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded; or

(2) any manager or managers of a limited liability company, if the articles of organization vest management of the limited liability company in one or more managers, who are authorized to bring suit on behalf of the limited liability company by the vote required pursuant to 35-8-403, provided that in determining the required vote, the vote of a manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded.

History: **En. Sec. 70, Ch. 120, L. 1993.**

Part 12

Merger

35-8-1201. Merger. (1) Pursuant to any agreement, a domestic limited liability company may merge with or into one or more limited liability companies formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.

(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.

(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:

(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.

(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:

(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies.

History: En. Sec. 71, Ch. 120, L. 1993.

Part 13

Professional Limited Liability Company

35-8-1301. Purposes of professional limited liability companies. Professional limited liability companies may be organized under this part only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under this chapter to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to the professions.

History: En. Sec. 72, Ch. 120, L. 1993.

35-8-1302. Professional limited liability company name. The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional l.l.c.", or "p.l.l.c."; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

History: En. Sec. 73, Ch. 120, L. 1993.

35-8-1303. Professional limited liability company managers. At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

History: En. Sec. 74, Ch. 120, L. 1993.

35-8-1304. Membership in professional limited liability company. (1) Only the following persons may be members of a professional limited liability company:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

History: En. Sec. 75, Ch. 120, L. 1993.

35-8-1305. Rendering services. A domestic or foreign professional limited liability company may render professional services in this state only through natural persons permitted to render the services in this state; however, nothing in this part requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

History: En. Sec. 76, Ch. 120, L. 1993.

35-8-1306. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. An employee of a professional limited liability company is not liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose employee performs professional services within the scope of the employee's employment or apparent authority to act for the company is liable to the same extent as the employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part.

History: En. Sec. 77, Ch. 120, L. 1993.

35-8-1307. Relationship to clients and patients. (1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a domestic or foreign professional limited liability company and its employees.

History: En. Sec. 78, Ch. 120, L. 1993.

CHAPTER 9

MONTANA CLOSE CORPORATION ACT

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Part 1

General

35-9-101. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

History: En. Sec. 1, Ch. 432, L. 1987.

35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain

the statement required by 35-9-103 except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under 35-9-103.

History: **En. Sec. 2, Ch. 432, L. 1987.**

35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: **En. Sec. 3, Ch. 432, L. 1987; amd. Sec. 197, Ch. 368, L. 1991.**

Part 2

Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of 35-1-628 that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

History: **En. Sec. 4, Ch. 432, L. 1987; amd. Sec. 198, Ch. 368, L. 1991.**

Cross-References

Share transfer restrictions, 35-9-202.

Compulsory purchase of shares, 35-9-205 through 35-9-208.

Shareholder agreements, 35-9-301.

35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

History: En. Sec. 5, Ch. 432, L. 1987.

Cross-References

Information on shares, 35-9-201.

Corporation's purchase options, 35-9-203, 35-9-204.

Merger and share exchange, 35-9-401.

Sale of assets, 35-9-401.

Termination of statutory close corporation status, 35-9-402.

35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(b) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of his offer to the corporation.

History: En. Sec. 6, Ch. 432, L. 1987.

35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

History: En. Sec. 7, Ch. 432, L. 1987.

Cross-References

Share transfer restrictions, 35-9-202.

35-9-205. Compulsory purchase of shares after death of shareholder. (1) This section and 35-9-206 through 35-9-208 apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-826 through 35-1-839 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of 35-9-206 through 35-9-208.

History: En. Sec. 8, Ch. 432, L. 1987; amd. Sec. 199, Ch. 368, L. 1991.

Cross-References

Court action to compel purchase, 35-9-206, 35-9-207.

35-9-206. Exercise of compulsory purchase right. (1) A person entitled and desiring to exercise the compulsory purchase right described in 35-9-205 shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial

statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under 35-9-207.

History: En. Sec. 9, Ch. 432, L. 1987.

Cross-References

Court action to compel purchase, 35-9-207.

35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

History: En. Sec. 10, Ch. 432, L. 1987.

Cross-References

Appraisal, 35-9-503.

35-9-208. Court costs and other expenses. (1) The court in a proceeding commenced under 35-9-207 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

History: En. Sec. 11, Ch. 432, L. 1987.

Cross-References

Appraisal, 35-9-503.

Part 3

Regulation and Operation

35-9-301. Shareholder agreements. (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by 35-9-302.

(5) A provision entitling one or more shareholders to dissolve the corporation under 35-9-404 is effective only if a statement of this right is contained in the articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

History: En. Sec. 12, Ch. 432, L. 1987.

Cross-References

Elimination of Board of Directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-416.

History: **En. Sec. 13, Ch. 432, L. 1987; amd. Sec. 200, Ch. 368, L. 1991.**

35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under 35-1-236.

History: **En. Sec. 14, Ch. 432, L. 1987; amd. Sec. 201, Ch. 368, L. 1991.**

Cross-References

Shareholder agreements, 35-9-301.

Termination of statutory close corporation status, 35-9-402.

35-9-304. Annual meeting. (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by 35-9-301 fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (1).

History: **En. Sec. 15, Ch. 432, L. 1987.**

35-9-305. Holding more than one office — execution of documents in more than one capacity. An individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

History: **En. Sec. 16, Ch. 432, L. 1987; amd. Sec. 1, Ch. 315, L. 1989; amd. Sec. 184, Ch. 368, L. 1991.**

35-9-306. Limited liability. The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

History: **En. Sec. 17, Ch. 432, L. 1987.**

Cross-References

Liability for preincorporation transactions, 35-1-119.

Elimination of Board of Directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

Part 4

Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets. (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

History: En. Sec. 18, Ch. 432, L. 1987.

Cross-References

Merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: En. Sec. 19, Ch. 432, L. 1987; amd. Sec. 202, Ch. 368, L. 1991.

Cross-References

Effect of termination, 35-9-403.

35-9-403. Effect of termination of statutory close corporation status. (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or, if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

History: En. Sec. 20, Ch. 432, L. 1987.

35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-931 through 35-1-935.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

History: En. Sec. 21, Ch. 432, L. 1987; amd. Sec. 203, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Part 5

Shareholder Protection

35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under 35-1-826 through 35-1-839 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under

35-9-502 through 35-9-504 are in addition to any other right or remedy he may have.

History: En. Sec. 22, Ch. 432, L. 1987; amd. Sec. 204, Ch. 368, L. 1991.

Cross-References

Shareholder agreements, 35-9-301.

Relief, 35-9-502 through 35-9-504.

35-9-502. Ordinary relief. (1) If the court finds that one or more of the grounds for relief described in 35-9-501(1) exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

History: En. Sec. 23, Ch. 432, L. 1987.

35-9-503. Extraordinary relief — share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

History: En. Sec. 24, Ch. 432, L. 1987.

35-9-504. Extraordinary relief — dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-938; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

History: En. Sec. 25, Ch. 432, L. 1987; amd. Sec. 205, Ch. 368, L. 1991.

CHAPTER 10

PARTNERSHIPS IN GENERAL

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35-10-407. Distributions in kind.
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35-10-409. Remedies of partnership and partners.

Part 5 — Property Rights of a Partner

35-10-501 through 35-10-504. Repealed.
35-10-505. Partner's transferable interest subject to charging order.
35-10-506. Partner's application to discharge attachment — undertaking.
35-10-507. Repealed.
35-10-508. Partner's interest in partnership property not transferable.
35-10-509. Partner's transferable interest in partnership.
35-10-510. Transfer of partner's transferable interest.

Part 6 — Dissolution and Winding Up

35-10-601. Repealed.
35-10-602. Partnership continues after dissolution.
35-10-603 through 35-10-608. Repealed.
35-10-609. Right to wind up partnership business.
35-10-610 through 35-10-615. Repealed.
35-10-616. Events causing partner's dissociation.
35-10-617. Partner's wrongful dissociation.
35-10-618. Effect of partner's dissociation.
35-10-619. Purchase of dissociated partner's interest.
35-10-620. Dissociated partner's power to bind partnership — liability to partnership.
35-10-621. Dissociated partner's liability to other persons.
35-10-622. Statement of dissociation.
35-10-623. Continued use of partnership name.
35-10-624. Events causing dissolution and winding up of partnership business.
35-10-625. Dissolution deferred ninety days.
35-10-626. Partner's power to bind partnership after dissolution.
35-10-627. Statement of dissolution.

35-10-628. Partner's liability to other partners after dissolution.
35-10-629. Settlement of accounts among partners.
35-10-630 through 35-10-634 reserved.
35-10-635. Conversion of partnership to limited partnership.
35-10-636. Conversion of limited partnership to partnership.
35-10-637. Effect of conversion — entity unchanged.
35-10-638 through 35-10-640 reserved.
35-10-641. Merger of partnerships.
35-10-642. Effect of merger.
35-10-643. Statement of merger.
35-10-644. Nonexclusive.

Part 1

Preliminary Provisions

35-10-101. Short title. This chapter may be cited as "Uniform Partnership Act".

History: En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Business" includes every trade, occupation, or profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(6) "Person" means an individual; corporation; business trust; estate; trust; partnership; association; joint venture; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(7) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(8) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(9) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, or an amendment or cancellation of the foregoing.

(10) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

History: En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102; amd. Sec. 1, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 deleted definition of bankrupt that read: ""Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act"; deleted definition of conveyance that read: ""Conveyance" includes every assignment, lease, mortgage, or encumbrance"; deleted definition of court that read: ""Court" includes every court and judge having jurisdiction in the case"; deleted definition of real property that read: ""Real property" includes land and any interest or estate in land"; inserted definitions of debtor in bankruptcy, distribution, partnership agreement, partnership at will, property, state, statement, and transfer; and substituted definition of person for former definition that read: ""Person" includes individuals, partnerships, corporations, and other associations."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-103. Knowledge and notice. (1) A person knows a fact if the person has knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to that person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(4) A person receives notification when it:

(a) comes to the person's attention; or

(b) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership.

History: En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103; amd. Sec. 2, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section clarifying the interpretation of "knowledge" and "notice" for former language that read: "(1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-104. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104; amd. Sec. 3, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 deleted (1) through (3) that read: "(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter"; after "law" inserted "with respect to the subject of this chapter"; deleted (5) that read: "(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947"; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Statutes in derogation of the common law — liberal construction, 1-2-103.

Agency, Title 28, ch. 10.

Partner by estoppel, 35-10-308.

35-10-105. Supplemental principles of law. (1) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

History: En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105; amd. Sec. 5, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section stating supplemental principles of law for former language that read: "In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Equitable principles, Title 1, ch. 3.

Maxims of jurisprudence, Title 1, ch. 3, part 2.

Uniform Commercial Code, Title 30, ch. 1 through 9.

35-10-106. Effect of partnership agreement — nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under 35-10-111 except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access to books and records under 35-10-402(2);

(c) eliminate the duty of loyalty under 35-10-405(3);

(d) unreasonably reduce the duty of care under 35-10-405(4);

(e) eliminate the obligation of good faith and fair dealing under 35-10-405(5);

(f) vary the power to withdraw as a partner under 35-10-616(1), except to require the notice to be in writing;

(g) vary the right to expulsion of a partner by a court in the events specified in 35-10-616(5);

(h) vary the requirement to wind up the partnership business in cases specified in 35-10-624(4), (5), or (6); or

(i) restrict rights of third parties under this chapter.

History: En. Sec. 4, Ch. 238, L. 1993.

35-10-107 through 35-10-110 reserved.

35-10-111. Execution, filing, and recording of statements. (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. The statement must be in the English language. An individual who executes a statement as or on behalf of a partner or other

person named as a partner in a statement shall state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this chapter.

History: En. Sec. 6, Ch. 238, L. 1993.

35-10-112. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 7, Ch. 238, L. 1993.

35-10-113. Filing with secretary of state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2.

History: En. Sec. 8, Ch. 238, L. 1993.

35-10-114 and 35-10-115 reserved.

35-10-116. Law governing internal affairs. The law of the state in which a partnership has its chief executive office governs the partnership's internal affairs.

History: En. Sec. 9, Ch. 238, L. 1993.

35-10-117. Partnership subject to amendment of repeal of chapter. A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

History: En. Sec. 10, Ch. 238, L. 1993.

Part 2

Nature of Partnership

35-10-201. Partnership as entity. A partnership is an entity.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106; amd. Sec. 11, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section defining a partnership as an entity for former language that read: "(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Limited partnerships, Title 35, ch. 12.

35-10-202. Creation of partnership. (1) Except as provided in subsection (2), the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(2) An association created under a statute other than this chapter, a predecessor law, or a comparable law of another jurisdiction is not a partnership.

(3) In determining whether a partnership is created, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or of another charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(4) Except as provided by 35-10-308, persons who are not partners as to each other are not partners as to other persons.

(5) A partnership created under this chapter is a general partnership, and the partners are general partners of the partnership.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107; amd. Sec. 12, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted (1) through (3) regarding creation of a partnership for introductory clause and former (1) that read: "In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by 35-10-308 persons who are not partners as to each other are not partners as to third persons"; in (3)(c), before "a partner", substituted "presumed to be" for "prima facie evidence that such person is"; substituted (3)(c)(i) through (3)(c)(vi) enumerating types of payments for former (4) that read: "(4) The receipt by a person of a share of the profits of a business is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise;

(b) as wages of an employee or rent to a landlord;

(c) as an annuity to a surviving spouse or representative of a deceased partner;

(d) as interest on a loan, though the amount of payment varies with the profits of the business;

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise"; inserted (4) regarding persons who are not partners as to each other; inserted (5) clarifying that a partnership is considered a general partnership; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Exception — sale of goodwill of business, 28-2-704.

Exception — dissolution of partnership, 28-2-705.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Debtor defined, 31-2-101.

Payment of wages generally, 39-3-204.

Kinds of ownership interests, Title 70, ch. 1, part 3.

Rental agreement — terms and conditions, 70-24-201.

UPC — intestacy, wills, and donative transfers, Title 72, ch. 2.

35-10-203. Partnership property. (1) Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

(2) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(3) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property.

(4) Property is presumed to be partnership property if purchased with partnership assets even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(5) Property acquired in the name of one or more of the partners without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets is presumed to be separate property even if used for partnership purposes.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108; amd. Sec. 13, Ch. 238, L. 1993; (2) thru (5)En. Sec. 14, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partnership property for former language that read: "(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Property assessment, 15-8-402, 15-8-403.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Part 3

Relation of Partner and Partnership to Other Persons

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-301. Partner as agent of partnership. Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(1) each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) an act of a partner that is not apparently for carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201; amd. Sec. 15, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 at beginning inserted introductory clause; in (1) and (2) substituted "ordinary course of the partnership business or business of the kind carried on by the partnership" for "the usual way"; deleted (3) and (4) that read: "(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction"; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Partner's application to discharge attachment, 35-10-506.

35-10-302. Transfer of partnership property. (1) Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(a) partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under 35-10-301 unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) partnership property held in the name of one or more persons other than the partnership without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership may be transferred free of any claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(3) if a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

History: En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202; amd. Sec. 16, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding transfer of partnership property for former language that read: "(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but the partnership may recover such property unless the partner's act binds the partnership under the provisions of 35-10-301(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the

partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Partnership property, 35-10-203.

Property rights of a partner, Title 35, ch. 10, part 5.

35-10-303. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.

35-10-304. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.

35-10-305. Partnership liable for partner's actionable conduct. (1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

(2) If, in the course of its business, a partnership receives money or property of a person not a partner and that money or property is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

History: En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205; amd. Sec. 19, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 inserted (2) regarding partnership liability for misapplied money or property; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-306. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.

35-10-307. Partner's liability. All partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

History: En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207; amd. Sec. 20, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's liability for former language that read: "All partners are liable:

(1) jointly and severally for everything chargeable to the partnership under 35-10-305 and 35-10-306;

(2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Liability of limited partner, 35-12-607, 35-12-703, 35-12-902, 35-12-1008.

35-10-308. Purported partner. (1) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

History: En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208; amd. Sec. 22, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 inserted (3) clarifying the extent of partnership through naming in a statement of authority; inserted (4) regarding lack of continuation of partnership despite failure to file or amend statement of dissociation; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Agency, Title 28, ch. 10.

Rules for determining the existence of a partnership, 35-10-202.

35-10-309. Liability of incoming partner. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.

History: En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209; amd. Sec. 23, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 near beginning, before "partnership", deleted "existing"; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-310. Statement of partnership authority. (1) A partnership may file a statement of partnership authority, which:

(a) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority or limitations on the authority of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to 35-10-111(5) and states the name of the partnership but does not contain all of the other information required by subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5).

(4) Except as provided in subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a limitation on that authority is not contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as provided in 35-10-622 and 35-10-627 and subsection (5) of this section, a person not a partner is not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless canceled earlier, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement or the most recent amendment was filed with the secretary of state.

History: En. Sec. 17, Ch. 238, L. 1993.

35-10-311. Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to 35-10-310(2) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in 35-10-310(4) and (5).

History: En. Sec. 18, Ch. 238, L. 1993.

35-10-312. Action by and against partnership and partners. (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) (i) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; and

(ii) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1) or (2).

History: En. Sec. 21, Ch. 238, L. 1993.

Part 4

Relation of Partners to Partnership and to One Another

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-401. Partner's rights and duties. (1) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits.

(3) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(5) A payment made by a partner that gives rise to a partnership obligation under subsection (3) or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301.

History: En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301; amd. Sec. 24, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present (1) and (2) regarding partner accounts for former language that read: "The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules: (1) Each partner shall be repaid his contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits"; in (3), after "payments", inserted "reasonably" and before "liabilities" deleted "personal"; in (4), after "contribute", deleted "shall be paid interest from the date of the payment or advance"; substituted (5) concerning a payment constituting a loan for former language that read: "A partner shall receive interest on the capital contributed by him only from the date when repayment should be made"; inserted (7) restricting use and possession of partnership property; inserted (11) regarding effect of partnership obligations on other persons; and made minor changes in style.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Property rights, Title 35, ch. 10, part 5.

35-10-402. Partner's right to information. (1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their

agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

History: En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302; amd. Sec. 26, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's right to information for former language that read: "The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-403. Duty of partners to render information. Each partner and the partnership, on demand, shall furnish to a partner and to the legal representative of a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

History: En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303; amd. Sec. 27, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's duty to provide information for former language that read: "Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-404. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.

35-10-405. General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived:

(i) by the partner in the conduct and winding up of the partnership business;

(ii) from a use or appropriation by the partner of partnership property; or

(iii) from a use or appropriation of an opportunity without the consent of the other partners;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(c) to refrain from competing with the partnership in the conduct of partnership business before the dissolution of the partnership without the consent of the other partners.

(3) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(4) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(5) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(6) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

History: En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304; amd. Sec. 28, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner conduct standards for former language that read: "(1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

35-10-406. Continuation of partnership beyond definite term or particular undertaking. (1) If a partnership for a definite term or particular undertaking is continued without an express agreement after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners or those of them who habitually acted in the business during the term or undertaking continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the business will not be wound up.

History: En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306; amd. Sec. 31, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partnership continuation for former language that read: "(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is prima facie evidence of a continuation of the partnership."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Cross-References

Dissolution and winding up, Title 35, ch. 10, part 6.

35-10-407. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

History: En. Sec. 25, Ch. 238, L. 1993.

35-10-408. Partner's liability to partnership. A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.

History: En. Sec. 29, Ch. 238, L. 1993.

35-10-409. Remedies of partnership and partners. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to 35-10-619 or enforce any other right under 35-10-616 through 35-10-623; or

(iii) right to compel a dissolution and winding up of the partnership business under 35-10-624 or enforce any other right under 35-10-602, 35-10-609, and 35-10-624 through 35-10-629; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 30, Ch. 238, L. 1993.

Part 5

Property Rights of a Partner

Part Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Limited partner's interest, 35-12-702, 35-12-705.

35-10-501 through 35-10-504. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-501. En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.

35-10-503. En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.

35-10-504. En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.

35-10-505. Partner's transferable interest subject to charging order. (1) On application by a judgment creditor of a partner or partner's transferee, a court having jurisdiction may charge the transferable interest of the debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than partnership property, by one or more of the other partners; or

(c) with partnership property, by one or more of the other partners with the consent of all the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under the exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History: En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405; amd. Sec. 35, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's transferable interest for former language that read: "(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action or which may be recovered against him in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Restrictions on partner's authority, 35-10-301.

35-10-507. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R.C.M. 1921; re-en. Sec. 9425, R.C.M. 1935; amd. Sec. 11-165, Ch. 264, L. 1963; R.C.M. 1947, 93-5811.

35-10-508. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

History: En. Sec. 32, Ch. 238, L. 1993.

35-10-509. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

History: En. Sec. 33, Ch. 238, L. 1993.

35-10-510. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under 35-10-624(6) a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

History: En. Sec. 34, Ch. 238, L. 1993.

Part 6

Dissolution and Winding Up

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-10-601. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.

35-10-602. Partnership continues after dissolution. A partnership continues after dissolution until the winding up of its business is completed, at which time the partnership is terminated.

History: En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502; amd. Sec. 46, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding continuation of partnership after dissolution for former language that read: "On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-603 through 35-10-608. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-603. En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.

35-10-604. En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.

35-10-605. En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.

35-10-606. En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.

35-10-607. En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.

35-10-608. En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.

35-10-609. Right to wind up partnership business. (1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative; settle and close the partnership's business; dispose of and transfer the partnership's property; discharge the partnership's liabilities; distribute the assets of the partnership pursuant to 35-10-629; settle disputes by mediation or arbitration; and perform other necessary acts.

History: En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509; amd. Sec. 47, Ch. 238, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding winding up partnership after dissolution for former language that read: "Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. However, any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court."

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1)

Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

35-10-610 through 35-10-615. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-610. En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.

35-10-611. En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.

35-10-612. En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.

35-10-613. En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.

35-10-614. En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.

35-10-615. En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.

35-10-616. Events causing partner's dissociation. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) a partnership that is a partner has been dissolved and its business is being wound up;

(5) the partner's expulsion by judicial decree, made on application by the partnership or another partner, because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 35-10-405; or

(c) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) failing within 90 days after the appointment to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

History: En. Sec. 36, Ch. 238, L. 1993.

35-10-617. Partner's wrongful dissociation. (1) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under 35-10-624(2)(a);

(ii) the partner is expelled by judicial decree under 35-10-616(5); or

(iii) a partner, who is not an individual, a trust other than a business trust, or an estate, is expelled or otherwise dissociated because the entity willfully dissolved or terminated.

(2) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

History: En. Sec. 37, Ch. 238, L. 1993.

35-10-618. Effect of partner's dissociation. (1) If a partner's dissociation results in a dissolution and winding up of the partnership business, 35-10-602, 35-10-609, and 35-10-624 through 35-10-629 apply; otherwise 35-10-619 through 35-10-623 apply.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in 35-10-609;

(b) the partner's duty of loyalty under 35-10-405(2)(c) terminates; and

(c) the partner's duty of loyalty under 35-10-405(2)(a) and (2)(b) and duty of care under 35-10-405(4) continue only with regard to matters arising or events occurring before the dissociation.

History: En. Sec. 38, Ch. 238, L. 1993.

35-10-619. Purchase of dissociated partner's interest. (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under 35-10-624, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) (a) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under 35-10-629(2) if on the date of dissociation the assets of the partnership were sold at a price equal to the greater of:

(i) the liquidation value; or

(ii) the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date.

(b) In either case, the selling price of the partnership assets must be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under 35-10-617(2) and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under 35-10-620. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay or cause to be paid in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) an explanation of how the estimated amount of the payment was calculated; and

(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to 35-10-409(2)(b)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with the requirements of subsection (7).

History: En. Sec. 39, Ch. 238, L. 1993.

35-10-620. Dissociated partner's power to bind partnership — liability to partnership. (1) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644, is bound by an act of the dissociated partner that would have bound the partnership under 35-10-301 before dissociation if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622.

(2) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under subsection (1).

History: En. Sec. 40, Ch. 238, L. 1993.

35-10-621. Dissociated partner's liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

History: En. Sec. 41, Ch. 238, L. 1993.

35-10-622. Statement of dissociation. (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

(3) For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

History: En. Sec. 42, Ch. 238, L. 1993.

35-10-623. Continued use of partnership name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

History: En. Sec. 43, Ch. 238, L. 1993.

35-10-624. Events causing dissolution and winding up of partnership business. Except as provided in 35-10-625, a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under 35-10-616(2) through (10), of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under 35-10-617 or a partner's dissociation by death or otherwise under 35-10-616(6) through (10), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

History: En. Sec. 44, Ch. 238, L. 1993.

35-10-625. Dissolution deferred ninety days. (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under 35-10-620(2) or 35-10-621(2) but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

History: En. Sec. 45, Ch. 238, L. 1993.

35-10-626. Partner's power to bind partnership after dissolution. Subject to 35-10-627, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under 35-10-301 before dissolution if the other party to the transaction did not have notice of the dissolution.

History: En. Sec. 48, Ch. 238, L. 1993.

35-10-627. Statement of dissolution. (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

(3) For the purposes of 35-10-301 and 35-10-626, a person not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

History: En. Sec. 49, Ch. 238, L. 1993.

35-10-628. Partner's liability to other partners after dissolution. (1) Except as provided in 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 35-10-626.

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

History: En. Sec. 50, Ch. 238, L. 1993.

35-10-629. Settlement of accounts among partners. (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive account balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance.

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations. If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

History: En. Sec. 51, Ch. 238, L. 1993.

35-10-630 through 35-10-634 reserved.

35-10-635. Conversion of partnership to limited partnership. (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12.

History: **En. Sec. 52, Ch. 238, L. 1993.**

35-10-636. Conversion of limited partnership to partnership. (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership incurred after the conversion takes effect.

History: **En. Sec. 53, Ch. 238, L. 1993.**

35-10-637. Effect of conversion — entity unchanged. (1) A partnership or limited partnership that has been converted pursuant to 35-10-635 or 35-10-636 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

History: **En. Sec. 54, Ch. 238, L. 1993.**

35-10-638 through 35-10-640 reserved.

35-10-641. Merger of partnerships. (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) the terms and conditions of the merger;

(e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(f) the street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

(b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

History: En. Sec. 55, Ch. 238, L. 1993.

35-10-642. Effect of merger. (1) When a merger takes effect:

(a) every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in 35-10-629(3) as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under 35-10-619. The surviving entity is bound under 35-10-620 by an act of a partner dissociated under this subsection, and the partner is liable under 35-10-621 for transactions entered into by the surviving entity after the merger takes effect.

History: En. Sec. 56, Ch. 238, L. 1993.

35-10-643. Statement of merger. (1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to 35-10-111, that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name

of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

History: En. Sec. 57, Ch. 238, L. 1993.

35-10-644. Nonexclusive. Sections 35-10-635 through 35-10-637 and 35-10-641 through 35-10-643 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

History: En. Sec. 58, Ch. 238, L. 1993.

CHAPTER 11

PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.
35-11-202. Certified copies of register and proof of publication to be evidence.

Chapter Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Part 1

Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

35-11-101. En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R.C.M. 1921; Cal. Civ. C. Sec. 2466; re-en. Sec. 8019, R.C.M 1935; amd. Sec. 2, Ch. 111, L. 1969; R.C.M. 1947, 63-601.

35-11-102. En. Sec. 3281, Civ. C. 1895; re-en. Sec. 5505, Rev. C. 1907; re-en. Sec. 8020, R.C.M. 1921; Cal. Civ. C. Sec. 2468; re-en. Sec. 8020, R.C.M 1935; R.C.M. 1947, 63-602(part).

35-11-103. En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R.C.M. 1921; Cal. Civ. C. Sec. 2469; re-en. Sec. 8021, R.C.M 1935; amd. Sec. 3, Ch. 111, L. 1969; R.C.M. 1947, 63-603.

Part 2

Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every such partnership and of each partner therein.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604; amd. Sec. 155, Ch. 575, L. 1981.

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by him and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605; amd. Sec. 156, Ch. 575, L. 1981.

CHAPTER 12

LIMITED PARTNERSHIPS

Part 1 — General

(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 2 — Formation—Certificate

(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 3 — Powers, Duties, and Liabilities of Partners

(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 4 — Dissolution

(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 5 — General Provisions

35-12-501. Short title.
35-12-502. Construction and application.
35-12-503. Rules for cases not provided for in this chapter.
35-12-504. Definitions.
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35-12-507. Specified office and agent.
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35-12-509. Nature of business.
35-12-510. Business transactions of partner with the partnership.
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35-12-521. Secretary of state to establish fees.

Part 6 — Formation—Certificate of Limited Partnership

35-12-601. Certificate of limited partnership.
35-12-602. Amendments to certificate.
35-12-603. Cancellation of certificate.
35-12-604. Execution of certificates.
35-12-605. Amendment or cancellation by judicial act.
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35-12-613. Involuntary cancellation of certificate.
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35-12-1003. Withdrawal of limited partner.
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Part 11 — Assignment of Partnership Interests

35-12-1101. Nature of partnership interest.
35-12-1102. Assignment of partnership interest.
35-12-1103. Rights of creditors.
35-12-1104. Right of assignee to become limited partner.
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Part 13 — Foreign Limited Partnerships

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35-12-1302. Registration.
35-12-1303. Issuance of registration.
35-12-1304. Name.
35-12-1305. Changes and amendments.
35-12-1306. Cancellation of registration.
35-12-1307. Transaction of business without registration.
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Part 14 — Derivative Actions

35-12-1401. Right of action.
35-12-1402. Proper plaintiff.
35-12-1403. Pleading.
35-12-1404. Expenses.

Chapter Cross-References

Applicability of partnership law, 35-10-201.

Part 1
General
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-101. En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.

35-12-102. En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.

35-12-103. En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.

35-12-104. En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2
Formation — Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-201. En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.

35-12-205. En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.

35-12-206. En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.

35-12-207. En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.

Part 3
Powers, Duties, and Liabilities of Partners
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-301. En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.

35-12-302. En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.

35-12-303. En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.

35-12-304. En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.

35-12-305. En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.

35-12-313. En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.

35-12-314. En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).

Part 4

Dissolution
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-401. (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947; Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

Part 5

General Provisions

Part Cross-References

Foreign limited partnerships, Title 35, ch. 12, part 13.

35-12-501. Short title. This chapter may be cited as the "Uniform Limited Partnership Act".

History: En. Sec. 1, Ch. 522, L. 1981.

35-12-502. Construction and application. This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

History: En. Sec. 2, Ch. 522, L. 1981.

35-12-503. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

History: En. Sec. 3, Ch. 522, L. 1981.

35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History: En. Sec. 4, Ch. 522, L. 1981.

35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" in full;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and

(4) may not be the same as or deceptively similar to the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

History: En. Sec. 5, Ch. 522, L. 1981; amd. Sec. 88, Ch. 120, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 120 in (4) inserted reference to limited liability company.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Limited partner not liable as a general partner, 35-12-703.

Rural cooperative utility names, 35-18-201.

35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or

foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

History: En. Sec. 6, Ch. 522, L. 1981.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-12-507. Specified office and agent. Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by 35-12-508; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

History: En. Sec. 7, Ch. 522, L. 1981.

Cross-References

Agency, Title 28, ch. 10.

35-12-508. Records to be kept. (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, set forth in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; and

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years.

(2) These records must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

History: En. Sec. 8, Ch. 522, L. 1981.

35-12-509. Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on.

History: En. Sec. 9, Ch. 522, L. 1981.

35-12-510. Business transactions of partner with the partnership. Except as otherwise provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto as a person who is not a partner.

History: En. Sec. 10, Ch. 522, L. 1981.

35-12-511 through 35-12-520 reserved.

35-12-521. Secretary of state to establish fees. The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.

History: En. Sec. 65, Ch. 522, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6

Formation — Certificate of Limited Partnership

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-12-601. Certificate of limited partnership. (1) Two or more persons desiring to form a limited partnership shall execute a certificate of limited partnership. The certificate must be filed in the office of the secretary of state and shall set forth:

(a) the name of the limited partnership;

(b) the general character of its business;

(c) the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

(d) the name and the business address of each partner (specifying the general partners and limited partners separately);

(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;

(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;

(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;

(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;

(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;

(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

(m) any other matters the partners, in their sole discretion, determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

History: En. Sec. 11, Ch. 522, L. 1981.

35-12-602. Amendments to certificate. (1) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;

(b) the admission of a new partner;

(c) the withdrawal of a partner; or

(d) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement therein was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, but amendments to show changes of addresses of limited partners need be filed only once every 12 months.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person is liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred

to in subsection (2) of this section if the amendment is filed within the 30-day period specified in subsection (2).

History: **En. Sec. 12, Ch. 522, L. 1981.**

Cross-References

Admission of a new partner, 35-12-701, 35-12-801.

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-603. Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of the certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate may determine.

History: **En. Sec. 13, Ch. 522, L. 1981.**

Cross-References

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-604. Execution of certificates. (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by each partner named therein.

(b) Each certificate of amendment must be signed by at least one general partner and by each other partner who is designated in the certificate as a new partner or whose contribution is described as having been increased.

(c) Each certificate of cancellation must be signed by each general partner.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission or increased contribution of a partner must specifically describe the admission or increase.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

History: **En. Sec. 14, Ch. 522, L. 1981.**

35-12-605. Amendment or cancellation by judicial act. If the persons required by 35-12-604 to execute any certificate of amendment or cancellation fail or refuse to do so, any other partner and any assignee of a partnership interest who is adversely affected by the failure or refusal may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

History: **En. Sec. 15, Ch. 522, L. 1981.**

35-12-606. Filing in the office of the secretary of state. (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the person who filed it or his representative.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein; and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled.

History: En. Sec. 16, Ch. 522, L. 1981; amd. Sec. 52, Ch. 131, L. 1983.

35-12-607. Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on his behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under 35-12-605.

History: En. Sec. 17, Ch. 522, L. 1981.

Cross-References

Nature of partner's liability, 35-10-307.

Liability of limited partner, 35-12-703.

35-12-608. Constructive notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated therein as limited partners are limited partners but is not constructive notice of any other fact.

History: En. Sec. 18, Ch. 522, L. 1981.

35-12-609. Delivery of certificates to limited partners. Upon the return by the secretary of state pursuant to 35-12-606 of any certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate to each limited partner unless the partnership agreement provides otherwise.

History: En. Sec. 19, Ch. 522, L. 1981.

35-12-610. Term and renewal of certification. (1) Certification of a limited partnership is effective for a term of 5 years from the date of filing or renewal of certification. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent fail to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.

History: **En. Sec. 1, Ch. 533, L. 1991.**

35-12-611. Application for renewal of certification. One original and one copy of an application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete name of the limited partnership;

(2) the name and address, including street name and number, if any, of each general partner;

(3) the address of the principal office of the limited partnership, including the street name and number;

(4) a description of the business;

(5) the name of the county or counties in which business is being transacted; and

(6) the name and address of the specified agent for service of process in the state.

History: **En. Sec. 2, Ch. 533, L. 1991.**

35-12-612. Filing of application for renewal of certification — issuance of certificate. (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, he shall, when all fees have been paid as provided by rule:

(a) endorse on the original and on the copy the word “filed” and the month, day, and year of filing;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The secretary of state shall return to the general partner or partners submitting the application the certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership.

History: **En. Sec. 3, Ch. 533, L. 1991.**

35-12-613. Involuntary cancellation of certificate. For a certificate filed prior to July 1, 1991, the secretary of state shall cancel the certificate of limited partnership after July 1, 1992, if the certification is more than 5 years old and not renewed in accordance with this part.

History: En. Sec. 4, Ch. 533, L. 1991.

35-12-614 reserved.

35-12-615. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989.

Cross-References

Filing of a facsimile copy — cooperative associations, 35-15-211.

Part 7

Limited Partners

35-12-701. Admission of additional limited partners. (1) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as a new limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

History: En. Sec. 20, Ch. 522, L. 1981.

Cross-References

General powers and liabilities of general partner, 35-12-803.

35-12-702. Voting. Subject to the provisions of 35-12-703, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or any other basis) upon any matter.

History: En. Sec. 21, Ch. 522, L. 1981.

35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner as such is not liable for the obligations of a limited partnership unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership;

(d) approving or disapproving an amendment to the partnership agreement; and

(e) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subsections (2)(a) and (2)(b) of 35-12-505, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: En. Sec. 22, Ch. 522, L. 1981.

Cross-References

Limited partnership defined, 35-12-504.

Partnership name not to contain surname of limited partner — exceptions, 35-12-505.

35-12-704. Person erroneously believing himself a limited partner. (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate if any is filed to show the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History: En. Sec. 23, Ch. 522, L. 1981; amd. Sec. 1, Ch. 85, L. 1985.

Cross-References

Secretary of state to establish fees, 35-12-521.

35-12-705. Right to information. Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable.

History: En. Sec. 24, Ch. 522, L. 1981.

Cross-References

Rights of partners, 35-10-301, 35-10-402, 35-10-406; Title 35, ch. 10, part 5; 35-10-609.

Rights of estate, 35-12-1105.

Part 8

General Partners

35-12-801. Admission. After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted only with the specific written consent of each partner.

History: En. Sec. 25, Ch. 522, L. 1981.

35-12-802. When person ceases to be general partner of limited partnership. Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to be a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) unless otherwise provided in the certificate of limited partnership, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without his consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) his death; or

(b) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property;

(7) in the case of a general partner who is acting as such in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership.

History: En. Sec. 26, Ch. 522, L. 1981.

35-12-803. General powers and liabilities. (1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History: En. Sec. 27, Ch. 522, L. 1981; amd. Sec. 2, Ch. 85, L. 1985.

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Limited partners — liability to third parties, 35-12-703.

35-12-804. Contributions by a general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent he is participating in the partnership as a limited partner.

History: En. Sec. 28, Ch. 522, L. 1981.

35-12-805. Voting. The partnership agreement may grant to all or a specified group of general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

History: En. Sec. 29, Ch. 522, L. 1981.

Part 9
Finance

35-12-901. Form of contributions. The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

History: En. Sec. 30, Ch. 522, L. 1981.

35-12-902. Liability for contributions. (1) Except as otherwise provided in the certificate of limited partnership, a partner is liable to the limited partnership for any promise to contribute cash or property or to perform services regardless of whether he is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by

consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or whose claim arises after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the precompromise obligation.

History: En. Sec. 31, Ch. 522, L. 1981.

Cross-References

Nature of partner's liability, 35-10-307.

35-12-903. Allocation of profits and losses. The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: En. Sec. 32, Ch. 522, L. 1981.

35-12-904. Allocation of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: En. Sec. 33, Ch. 522, L. 1981.

Part 10

Distribution and Withdrawals

35-12-1001. Interim distributions. Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or on the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership.

History: En. Sec. 34, Ch. 522, L. 1981.

35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History: En. Sec. 35, Ch. 522, L. 1981.

35-12-1003. Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in the certificate of limited partnership and in accordance with any procedures provided in the partnership agreement. If the certificate of limited partnership does not specify the time or the events on the happening of which a limited partner may withdraw from the limited partnership or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw from the limited partnership upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

History: En. Sec. 36, Ch. 522, L. 1981.

35-12-1004. Distributions upon withdrawal. Except as provided in 35-12-1001 through 35-12-1008, upon withdrawal any withdrawing partner is entitled to receive any distributions to which he is entitled under the partnership agreement and, if not provided, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal, based upon his right to share in distributions from the limited partnership.

History: En. Sec. 37, Ch. 522, L. 1981.

35-12-1005. Distributions in kind. Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

History: En. Sec. 38, Ch. 522, L. 1981.

35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution.

History: En. Sec. 39, Ch. 522, L. 1981.

35-12-1007. Limitations on distributions. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership's assets.

History: En. Sec. 40, Ch. 522, L. 1981.

35-12-1008. Liability upon return of contributions. (1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, for a period of 1 year thereafter he is liable to the limited partnership for the amount of his contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, for a period of 6 years

thereafter he is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contributions which have not theretofore been distributed to him.

History: En. Sec. 41, Ch. 522, L. 1981.

Part 11
Assignment of Partnership Interests

35-12-1101. Nature of partnership interest. A partnership interest is a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets. A partnership interest is personal property.

History: En. Sec. 42, Ch. 522, L. 1981.

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights thereof. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History: En. Sec. 43, Ch. 522, L. 1981.

Cross-References

Nature of partnership liability, 35-10-307.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest thereon. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History: En. Sec. 44, Ch. 522, L. 1981.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Relative rights of different creditors, 31-2-105.

35-12-1104. Right of assignee to become limited partner. (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of his assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902.

History: En. Sec. 45, Ch. 522, L. 1981.

35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.

History: En. Sec. 46, Ch. 522, L. 1981.

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Assignment of partnership interest, 35-12-1102.

Part 12
Dissolution

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-12-1201. Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in the certificate of limited partnership;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and he does so, but the limited

partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202.

History: En. Sec. 47, Ch. 522, L. 1981.

35-12-1202. Dissolution by decree of court. On application by or for a partner, the district court may decree a dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History: En. Sec. 48, Ch. 522, L. 1981.

35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; but any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the district court.

History: En. Sec. 49, Ch. 522, L. 1981.

Cross-References

Right to wind up partnership, 35-10-609.

35-12-1204. Distribution of assets. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to 35-12-1001 or 35-12-1004;

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to 35-12-1001 or 35-12-1004; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second, respecting their partnership interests, in the proportions in which the partners share in distributions.

History: En. Sec. 50, Ch. 522, L. 1981; amd. Sec. 206, Ch. 368, L. 1991.

Part 13

Foreign Limited Partnerships

35-12-1301. Law governing. Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

History: En. Sec. 51, Ch. 522, L. 1981.

35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership must register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subsection (4) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

History: En. Sec. 52, Ch. 522, L. 1981; amd. Sec. 53, Ch. 131, L. 1983.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with a copy of the application, must be returned to the person who filed the application or his representative.

History: En. Sec. 53, Ch. 522, L. 1981; amd. Sec. 54, Ch. 131, L. 1983.

35-12-1304. Name. A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" and that could be registered by a domestic limited partnership.

History: En. Sec. 54, Ch. 522, L. 1981.

35-12-1305. Changes and amendments. If any statement in a foreign limited partnership's application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

History: En. Sec. 55, Ch. 522, L. 1981.

35-12-1306. Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation, signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 56, Ch. 522, L. 1981.

35-12-1307. Transaction of business without registration. (1) A foreign limited partnership transacting business in this state without registration may not maintain any action, suit, or proceeding in any court of this state until it has registered.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership and does not prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's transacting business in this state without registration.

(4) A foreign limited partnership, by transacting business in this state without registration appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 57, Ch. 522, L. 1981.

Cross-References

Effect of transacting business without certificate, 30-13-215.

35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1307.

History: En. Sec. 58, Ch. 522, L. 1981; amd. Sec. 89, Ch. 370, L. 1987.

Part 14
Derivative Actions

35-12-1401. Right of action. A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

History: En. Sec. 59, Ch. 522, L. 1981.

35-12-1402. Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action and at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History: **En. Sec. 60, Ch. 522, L. 1981.**

35-12-1403. Pleading. In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort.

History: **En. Sec. 61, Ch. 522, L. 1981.**

35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the limited partnership for the remainder of the proceeds so received by him.

History: **En. Sec. 62, Ch. 522, L. 1981.**

CHAPTER 13

MINING PARTNERSHIPS

Part 1 — Formation

35-13-101. When a mining partnership exists.
35-13-102. Express agreement not necessary to formation.

Part 2 — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.
35-13-202. Owners of majority interest govern.
35-13-203. Mine — partnership property.
35-13-204. Profits and losses — how shared.
35-13-205. Lien of partner for debts due creditors.
35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner.
35-13-207. Purchaser takes subject to liens — exception for good faith purchaser.
35-13-208. When purchaser takes with notice of liens.

Chapter Cross-References

Abuse of property held jointly or in common — action, 70-1-311, 70-19-202.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2

Relations Between Partners and with Third Persons

Part Cross-References

Relations among partners, partnerships, and third persons, Title 35, ch. 10, parts 3, 4.

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: **En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.**

Cross-References

Liens generally, Title 71, ch. 3, part 1.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: **En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.**

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: **En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.**

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: **En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.**

CHAPTER 14

RESERVED

CHAPTER 15

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35-15-507. Statute of limitations.

Chapter Cross-References

Fire department relief associations, 19-18-102.

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Livestock protective associations, Title 81, ch. 6.

Part 1

General

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable. Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).

Cross-References

Effect of merger or consolidation, 35-15-505.

35-15-103. Powers. (1) Associations formed under this chapter shall be bodies corporate and politic for the period for which they are organized, not exceeding 40 years.

(2) Associations formed under this chapter may:

(a) sue and be sued;

(b) have a common seal which they may alter or renew at pleasure;

(c) own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business and sell and dispose of the same; and

(d) borrow money and pledge their property, both real and personal, to secure the payment thereof.

(3) Associations formed under this chapter shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed and such as are usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this chapter.

History: En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205.

Cross-References

Effect of merger or consolidation, 35-15-505.

Powers of cooperatives, 35-18-106.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;
(c) its location;
(d) the duration of the association; and
(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201; amd. Sec. 31, Ch. 174, L. 1983; amd. Sec. 3, Ch. 559, L. 1987; amd. Sec. 207, Ch. 368, L. 1991.

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

Cross-References

Assignment of stock, 35-15-403.

35-15-203. First meeting. As soon as 10 or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given to each subscriber by depositing same in the post office, properly addressed, at least 10 days before the time fixed, stating the object, time, and place of said meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part).

Cross-References

Stockholders' meetings, 35-15-302.

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be executed by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 32, Ch. 174, L. 1983.

Cross-References

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 33, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

35-15-207 through 35-15-210 reserved.

35-15-211. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989.

Cross-References

Filing of a facsimile copy — limited partnerships, 35-12-615.

Part 3

Shareholders, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be

given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).

Cross-References

First meeting of subscribers, 35-15-203.

Assignment of stock, 35-15-403.

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212.

Cross-References

Assignment of stock, 35-15-403.

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors appor-

tioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: (1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part); amd. Sec. 34, Ch. 174, L. 1983.

Part 4

Shares, Dividends, and Distributions

Part Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-15-401. Classes of stock. (1) The shares of stock shall not be less than $10 or more than $5,000 per share and may be made payable in installments.

(2) Every cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding 6% per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares. However, the owners of common stock in the different classes shall have the same power and vote in the association.

(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: **En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).**

35-15-403. Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share but shall remain jointly liable therefor with the assignee.

History: **En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208.**

Cross-References

Limit on subscription or control of common stock — one share per person, 35-15-202.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member shall be exempt from seizure on attachment or sale under execution.

(2) Upon his death the share shall be sold by the association and the proceeds after deducting all liabilities to the association shall be delivered to his heirs.

History: **En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: **En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: **En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).**

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4); amd. Sec. 35, Ch. 174, L. 1983.

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(3) Nothing in this part shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).

CHAPTER 16

AGRICULTURAL ASSOCIATIONS

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35-16-405. Execution and record of mortgage — lien.
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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Conservation districts, Title 76, ch. 15.

Part 1

General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Shares of business corporations, Title 35, ch. 1, part 6.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302; amd. Sec. 4, Ch. 559, L. 1987; amd. Sec. 208, Ch. 368, L. 1991.

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for incorporation, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Directors — number — powers, 35-16-315.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk

and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: **En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.**

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: **En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.**

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: **En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.**

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or

district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.

Cross-References

Directors — number — powers, 35-16-315.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.

35-16-210. Existing associations — reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions hereof desiring to come within the provisions hereof may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions hereof and request 10 or more of their members qualified as herein provided for to prepare and file, in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If thereafter not less than two-thirds of the stockholders or members as such of such cooperative or other corporation, association, society, or group of individuals shall either file with the corporation or district their written consent to such reorganization or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors or other governing board of such existing cooperative or other corporation, association, society, or group of individuals shall be authorized to through proper officers transfer to such new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation or district of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of such reorganization and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325.

Cross-References

Objection to notice of hearing of petition for creation of debt, 35-16-404.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. In the event any stockholder or member of such existing cooperative or other corporation, association, society, or group of individuals shall decline to consent to such transfer or refuse to become a member of such new organization, he must, within 30 days from and after receiving written notice of the transfer of said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business his petition praying for the net value of his equity as a stockholder or member in said cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the said property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326.

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members which he represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979.

Cross-References

Voting proxies, 35-16-311.

Elections, 35-16-312, 35-16-313.

Part 3

Members and Directors

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.

Cross-References

Corporate indebtedness as lien upon membership lands, 35-16-401.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions hereof, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation or district or its bylaws, applying for membership therein to the officers thereof by written application, duly acknowledged:

(a) containing a full, true, and correct description of the lands owned by him and proposed to be contained in said corporation or district;

(b) containing a statement of his desire to become a member thereof and his consent to submit his lands to the provisions hereof and to the administration of said corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the lands so owned by him and proposed to be submitted to said corporation or district, its objects and purposes.

(2) If said application shall be in proper form and the applicant be the holder of title or evidence of title to the lands described and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation or district and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands or the greater portion thereof is situate. He shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof and the lands described in the petition shall thereafter be construed to be a part of said corporation or district to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306.

35-16-303. Withdrawal of membership lands — procedure. Any person holding title or evidence of title to membership lands included in a corporation or district organized under the provisions hereof subsequently desiring to withdraw his lands from such corporation or district may do so upon presenting to the board of directors his verified petition stating that he is the holder of title or evidence of title to membership lands included therein, particularly describing the same with a map or plat thereof, that he is desirous of withdrawing from such corporation or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out or furnish a receipt for such amount from the mortgage or lien holders holding liens against such lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of said lands from incorporation or district and its liabilities. Upon presentation of such release to the mortgage or lien holder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lien holder and the withdrawee for the payments of such funds on their debt or liability.

History: **En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323.**

35-16-304. Withdrawal — application to court for order. In the event the board of directors shall refuse or fail for a period of 30 days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands or the larger proportion of the same shall be situated for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: **En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324.**

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any such meeting. Where any subdivision or subdistrict fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting.

History: **En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317.**

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: **En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.**

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: **En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.**

35-16-314. Qualifications of directors — quorum — vacancies. (1) No person shall be eligible to be a director of any corporation or district organized under the provisions hereof who is not himself a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the bylaws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: **En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314.**

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: **En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.**

Cross-References

Amendment of bylaws, 35-16-208.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

History: **En. Sec. 2, Ch. 93, L. 1921; re-en. Sec. 6427, R.C.M. 1921; re-en. Sec. 6427, R.C.M. 1935; R.C.M. 1947, 14-331.**

Part 4

Corporate Indebtedness

Part Cross-References

Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent

lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

Cross-References

Petition for incorporation, 35-16-202.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon and authorizing, directing, and empowering the executive officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: **En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.**

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17

COOPERATIVE AGRICULTURAL MARKETING

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35-17-507. Statute of limitations.

Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Agricultural marketing and transportation, Title 80, ch. 11, part 1.

Wheat research and marketing, Title 80, ch. 11, part 2.

Livestock marketing, Title 81, ch. 8.

Part 1

General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(4) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

(5) Associations organized hereunder shall be deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

Cross-References

Nonprofit corporations generally, Title 35, ch. 2.

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.

Cross-References

Articles to specify purpose, 35-17-202.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.

Cross-References

Articles of incorporation to specify purpose, 35-17-202.

Who may be members, 35-17-301.

Assignment of agreement as security for loans, 35-17-408.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

History: En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408; amd. Sec. 36, Ch. 174, L. 1983; amd. Sec. 5, Ch. 559, L. 1987; amd. Sec. 209, Ch. 368, L. 1991.

Cross-References

Permissible purposes for organization, 35-17-105.

Directors, 35-17-311.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409; amd. Sec. 37, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall prepare one original and one copy of a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420; amd. Sec. 157, Ch. 575, L. 1981; amd. Sec. 55, Ch. 131, L. 1983; amd. Sec. 38, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-17-409.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized hereunder shall pay to the secretary of state $40 and for filing an amendment to the articles and receiving a certificate of amendment, $10.

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422.

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Filing fees, 35-17-409.

Certificate of incorporation for cemetery associations, 35-20-103.

35-17-206. Bylaws. (1) Each association incorporated under this chapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of such votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, time of their election, and the mode and manner of giving notice thereof;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the same, and the purposes for which they may be used;

(h) the amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and the shares of common stock; the conditions upon which and the time when membership of any member shall cease;

(j) the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

Cross-References

Operation detailed, Title 35, ch. 17, part 3.

Part 3

Operation — Members, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Bylaws, 35-17-206.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(3) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(2) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(3) No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock

at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-17-303. Limited liability of members. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-304. Withdrawal or expulsion of member. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within 1 year after such expulsion or withdrawal.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: (1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) No director during the term of his office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412.

35-17-312. Officers — election — bank as treasurer. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

History: En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of

the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415.

35-17-314. Referendum to membership of matters passed by board. Upon demand of 40% of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416.

35-17-315. Creation of capital reserve — distribution of net earnings. (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations, or in any combination thereof.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430.

Part 4

Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

(3) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to

prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: **En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417.**

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: **En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.**

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: **En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.**

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: **En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.**

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: **En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.**

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: **En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.**

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.

Part 5

Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5); amd. Sec. 158, Ch. 575, L. 1981; amd. Sec. 39, Ch. 174, L. 1983.

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

(3) No right of any creditor may be impaired by the merger or consolidation without his consent.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7); amd. Sec. 159, Ch. 575, L. 1981.

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).

CHAPTER 18

RURAL COOPERATIVE UTILITIES

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35-18-510. Statute of limitations.

Chapter Cross-References

Power and energy companies, Title 69, ch. 5.

Part 1

General

35-18-101. Short title. This chapter may be cited as the "Rural Electric and Telephone Cooperative Act".

History: **En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.**

35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971.

History: **(1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979; amd. Sec. 1, Ch. 208, L. 1981; amd. Sec. 2, Ch. 168, L. 1987.**

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: **En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.**

35-18-104. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: **En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529.**

Cross-References

Regulation of utilities, Title 69, ch. 3.

Utility lines and facilities provisions, Title 69, ch. 4.

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter:

(1) for the purpose of supplying electric energy and promoting and extending the use of electric energy in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of additional facilities as are required to assure the availability of service to the widest practicable number of users of telephone service, cable television service, or broadband facilities; and

(3) for purposes allowable under federal authorization, including rural economic development activites.

History: **En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979; amd. Sec. 1, Ch. 254, L. 1985; amd. Sec. 3, Ch. 168, L. 1987; amd. Sec. 1, Ch. 61, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 61 inserted (3) allowing organization under federal authorization; and made minor changes in style.

35-18-106. Powers of cooperatives. A cooperative has power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock in other cooperatives or corporations;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property, which may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;

(14) do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985; amd. Sec. 4, Ch. 168, L. 1987; amd. Sec. 2, Ch. 61, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 61 at end of (14) inserted "or authorized under federal law"; and made minor changes in style.

Cross-References

Articles of incorporation, 35-18-203.

Bylaws, 35-18-207.

Disposition or encumbrance of property, 35-18-317.

Merger or consolidation, 35-18-403.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered or certified mail to such corporation at the address thereof specified in such instrument.

(3) Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

(4) Any such foreign corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenues and income to be derived therefrom.

History: En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526.

Cross-References

Merger, consolidation, dissolution, winding up, Title 35, ch. 18, part 4.

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.

Cross-References

Meetings of members, 35-18-303.

35-18-109. No area restriction — telephone cooperatives. A telephone cooperative, regardless of when it was organized pursuant to 35-18-105, is not restricted by population of area served or other criteria to any area of service.

History: En. Sec. 1, Ch. 168, L. 1987.

Part 2
Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-18-201. Name. (1) The name of each cooperative shall include the words “electric” or “telephone” and “cooperative” and the abbreviation “Inc.”; provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words “electric” or “telephone” and “cooperative” shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.

Cross-References

Members — incorporators — users, 35-18-301.

Incorporators' role in dissolution, 35-18-404.

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506; amd. Sec. 40, Ch. 174, L. 1983; amd. Sec. 6, Ch. 559, L. 1987; amd. Sec. 211, Ch. 368, L. 1991.

Cross-References

Effect of merger or consolidation, 35-18-403.

Filings and fees, Title 35, ch. 18, part 5.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a); amd. Sec. 41, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-501.

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b); amd. Sec. 42, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-18-502.

35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516; amd. Sec. 43, Ch. 174, L. 1983; amd. Sec. 5, Ch. 168, L. 1987.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Filing and fees for articles of conversion, 35-18-501, 35-18-502.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: **En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.**

Part 3
Operation — Members, Trustees, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

35-18-301. Members. (1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof.

(2) Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a).**

35-18-302. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

History: **En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Effect of merger or consolidation on liabilities, 35-18-403.

Liabilities under dissolution and winding up of cooperatives, 35-18-404, 35-18-405.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at such place as shall be determined by the board of trustees.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall

be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g); amd. Sec. 1, Ch. 131, L. 1981.

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative that is a member of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to cooperative employees; and

(b) except in emergencies, may not be employed by the cooperative in any capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the cooperative at any meeting or on any business whenever representation has been approved by the board.

(4) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

(5) The policies of the cooperative may provide that benefits provided to employees may be extended to trustees.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d); amd. Sec. 1, Ch. 237, L. 1981; amd. Sec. 1, Ch. 41, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 41 in (2)(a) inserted exception clause regarding provision of insurance coverage; inserted (5) allowing extension of benefit coverage to trustees; and made minor changes in style.

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(2) A majority of the board of trustees shall constitute a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except such as are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e).

35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district:

(a) a designated number of trustees shall be elected by the members residing therein;

(b) a designated number of delegates shall be elected by the members residing therein; or

(c) both such trustees and delegates shall be elected by such members.

(2) In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees.

(3) No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510.

35-18-314. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary, and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511.

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.

35-18-316. Refunds to members — retention of unclaimed refunds. (1) Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

(f) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes.

History: En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520; amd. Sec. 1, Ch. 263, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 263 inserted (3) requiring retention of patronage refunds that remain unclaimed for 5 years and providing that the refunds be used for educational purposes; and made minor changes in style.

Cross-References

Distributions to members under dissolution and winding up proceedings, 35-18-405.

35-18-317. Disposition or encumbrance of property. (1) Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting.

(2) The board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of such property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521; amd. Sec. 1, Ch. 289, L. 1987.

Cross-References

Powers of rural cooperative utilities, 35-18-106.

Disposition of property under merger, consolidation, and dissolution, Title 35, ch. 18, part 4.

35-18-318. Long-term indebtedness — membership approval. Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

History: En. Sec. 1, Ch. 206, L. 1983.

Part 4

Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514; amd. Sec. 44, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of

consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513; amd. Sec. 45, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a); amd. Sec. 46, Ch. 174, L. 1983.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be

necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b); amd. Sec. 47, Ch. 174, L. 1983; amd. Sec. 2, Ch. 289, L. 1987.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

Part 5

Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state, immediately upon the filing in his office of any articles pursuant to this chapter, shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519; amd. Sec. 48, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204.

35-18-502. Fees to be charged by secretary of state. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $40;

(2) filing articles of amendment and issuing a certificate of amendment, $10;

(3) filing articles of consolidation or merger and issuing a certificate of consolidation or merger, $10;

(4) filing articles of conversion and issuing a certificate of conversion, $10;

(5) filing certificate of election to dissolve and issuing certificate of election to dissolve, $10;

(6) filing articles of dissolution and issuing certificate of dissolution, $10; and

(7) filing certificate of change of principal office and issuing certificate of change of office, $10.

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527.

35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service was supplied during the previous calendar year within the state and, except as provided in 10-4-201, shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528; amd. Sec. 19, Ch. 635, L. 1985; amd. Sec. 7, Ch. 676, L. 1991.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Exempt securities, 30-10-104.

35-18-504. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

35-18-505. Penalty and interest for delinquency — waiver. (1) Fees due under this chapter become delinquent if not paid on or before July 1 for the previous calendar year. The department of revenue shall add to the amount of each delinquent fee a penalty of 10% of the amount of the fee plus interest at the rate of 1% per month or fraction of a month computed on the total fee. Interest is computed from the date the fees were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to pay the fee required by 35-18-503 is provided to the department.

History: En. Sec. 16, Ch. 676, L. 1991.

35-18-506. Deficiency assessment — hearing — interest. (1) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the taxpayer a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional fee, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his additional liability. If a protest is not filed, the amount of the additional fee proposed to be assessed becomes final upon expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) (a) When a deficiency is determined and the additional fee becomes final, the department shall mail a notice and demand for payment to the taxpayer. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

History: En. Sec. 17, Ch. 676, L. 1991.

35-18-507 through 35-18-509 reserved.

35-18-510. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the

department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

CHAPTER 19

RESERVED

CHAPTER 20

CEMETERY ASSOCIATIONS

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35-20-313. Investment of fund.
35-20-314. Compensation of trustees of fund.
35-20-315. Annual report of trustees of fund.

Chapter Cross-References

Morticians and funeral directors, Title 37, ch. 19.

Health and safety — death, Title 50, ch. 15, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-20-101. Permissible purposes for association — first meeting — election of trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they or a majority of them agree upon and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association shall be known and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three or more than nine. Thereupon they may proceed to elect by ballot the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101.

35-20-102. Classification of trustees — staggered terms. The chairman and secretary of such meeting shall immediately after such election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; those in the second class, 2 years; and those in the third class, 3 years; but the trustees of each class may be reelected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102.

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216(2)(d).

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103; amd. Sec. 7, Ch. 559, L. 1987; amd. Sec. 212, Ch. 368, L. 1991.

35-20-104. Effect of filing — powers of association — eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.

Part 2

Operations Generally — Trustees of Association

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

Cross-References

Local government involvement — cemeteries, Title 7, ch. 35, part 1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.

Cross-References

Annual report — accounting requirement, 35-20-207.

Estates, Title 72.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107.

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which he shall enter as correctly and carefully as may be the name, age, sex, nativity, and cause of death with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased or undertaker as give order for such interment at the time thereof or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108.

Cross-References

Secretarial recording of appointments, 35-20-308.

Secretary of association as secretary of trustee or board of trustees, 35-20-309.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.

Cross-References

Duties of secretaries, 35-20-308, 35-20-309.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: **En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.**

Cross-References

Fund required, 35-20-301.

Use of fund income, 35-20-312.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: **En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).**

35-20-216. Inalienability of lots. (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of his decease;
(b) a relative of some person having such interest;
(c) the wife or husband of such a person; or
(d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts thereof to other purchasers

in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119.

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Part 3

Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever moneys to the amount of $100 shall have been received by such corporation or association, formed, before or after February 16, 1905, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund. The judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of said association.

(2) Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification as hereinafter provided of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.

(3) The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Mausoleums and columbariums — bank or trust company as trustee, 35-21-610.

Trust administration, Title 72, ch. 34.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until

July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Any failure so to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(5) The trustee or trustees of such fund may deposit such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds, and securities and pay them out or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such moneys, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

Cross-References

Trust administration, Title 72, ch. 34.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: **En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.**

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: **En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.**

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: **En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.**

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of this chapter to the per-

manent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: **En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.**

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: **En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.**

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: **En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.**

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: **En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.**

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

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Chapter Cross-References
Morticians and funeral directors, Title 37, ch. 19.

Health and safety — death, Title 50, ch. 15, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Part 1
General

35-21-101. Short title. This chapter shall be known as the "Mausoleum-Columbarium Act".

History: En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. Definitions. For the purposes of this chapter, certain words used in this chapter have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure that contains niches for permanent inurnment of cremated remains, as defined in 37-19-101, in a place used or intended to be used and dedicated for interment purposes.

(2) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb uncremated human remains.

(3) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(4) "Entombment" means the placement of human remains in a crypt or vault.

(5) "Human remains" or "remains" has the meaning as defined in 37-19-101.

(6) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(7) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(8) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(9) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(10) "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium; interring human remains; and the care, preservation, and embellishment of the property.

(11) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(12) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but does not refer to any

corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums or columbariums where interment is also made by ground burial.

(13) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. The terms include and apply to one or more adjoining crypts or vaults or one or more adjoining niches.

(15) "Plot owner", "owner", or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

(16) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

(17) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. Whenever the context permits, "urn garden" is included in "columbarium".

History: En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519; amd. Sec. 11, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 deleted former definition of cremated remains that read: ""Cremated remains" means human remains after cremation in a crematory"; deleted former definition of cremation that read: ""Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory"; deleted former definition of crematory that read: ""Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains"; in definition of columbarium inserted reference to 37-19-101; in definition of human remains or remains substituted "has the meaning as defined in 37-19-101" for "means the body of a deceased person and includes the body in any stage of decomposition and cremated remains"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-103. Exemptions and limitations on applicability of chapter. (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium;

(c) any crematory, crematory operator, or crematory technician licensed under Title 37, chapter 19.

(2) A condition, section, or provision of this chapter may not be construed or interpreted to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory or combination thereof is situated, maintained, or operated in conjunction with

a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions are applicable to mausoleums or columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as provided in this chapter and owning, controlling, or operating lands, buildings, or structures solely for the entombment and inurnment of human remains.

History: (1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014; amd. Sec. 12, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 inserted (1)(c) exempting a licensed crematory, crematory operator, or crematory technician; and made minor changes in style. Amendment effective February 10, 1993.

Cross-References

Corporate powers enlarged, 35-21-203.

Part 2

Organization and Regulation of Business

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-21-201. Incorporation required for transaction of business. It is unlawful for any corporation, partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.

35-21-202. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall, in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business and either on the dedicated premises or separately, any business incidental to the burial or preparation for burial of dead human bodies.

History: En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.

Cross-References

Encumbrances subordinate to dedication, 35-21-407.

Sale of interment plots, 35-21-412.

35-21-203. Corporate powers enlarged. The powers, privileges, and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this chapter.

History: En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.

35-21-204. Power to establish and operate mausoleum or columbarium. A private corporation organized under the laws of the state of Montana and authorized by its articles may establish, maintain, manage, improve, or operate a mausoleum, columbarium, or mausoleum-columbarium and conduct any of the businesses of a mausoleum-columbarium either for or without profit to its members or stockholders.

History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part); amd. Sec. 13, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 in two places deleted reference to crematory; and made minor changes in style. Amendment effective February 10, 1993.

35-21-205. Governing board — number of members. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).

Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-21-206. Office of director or officer violating chapter becomes vacant. The office of any director or officer who acts or permits action contrary to this chapter immediately thereupon becomes vacant.

History: En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.

35-21-207. Rulemaking power. A mausoleum-columbarium authority may adopt and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum or columbarium and for the other purposes specified in 35-21-208 through 35-21-216.

History: En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705; amd. Sec. 14, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 near beginning, before "adopt", deleted "make", after "adopt" deleted "amend, add to, revise, or modify", and near end, after "columbarium", deleted "or crematory"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-208. Power to limit use of property. A mausoleum-columbarium authority may restrict and limit the use of all property within its mausoleum or columbarium.

History: En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706; amd. Sec. 15, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 at beginning substituted "A mausoleum-columbarium authority" for "It" and at end, after "columbarium", deleted "or crematory"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-209. Regulation of markers, monuments, and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.

35-21-210. Regulation or prohibition of erection of monuments, markers, and structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.

35-21-211. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.

Cross-References

Acceptance of gifts in trust — improvement, 35-21-622.

Destruction or injury of property, 35-21-704.

35-21-212. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules.

History: En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.

35-21-213. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.

35-21-214. Rules for other purposes. A mausoleum-columbarium authority may make and enforce rules for all other purposes considered necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum or columbarium, for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum or columbarium is conducted.

History: En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712; amd. Sec. 16, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 at beginning substituted "A mausoleum-columbarium authority" for "It" and near middle and at end, after "columbarium", deleted "or crematory"; and made minor changes in style. Amendment effective February 10, 1993.

Cross-References

Sale of interment plots, 35-21-412.

35-21-215. Rules to be printed or typed — inspection. The rules made pursuant to 35-21-214 shall be plainly printed or typewritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.

35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and any other person designated by the mausoleum-columbarium authority have the authority of a peace officer for the purpose of maintaining order and enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which the person has charge and within the radius necessary to protect the mausoleum-columbarium property.

History: **En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714; amd. Sec. 160, Ch. 575, L. 1981; amd. Sec. 17, Ch. 38, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 38 at end, before "property", deleted "or crematory"; and made minor changes in style. Amendment effective February 10, 1993.

Cross-References

General laws — miscellaneous terms, 1-1-207.

35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, and columbariums within which the interment of the dead may be authorized by law.

History: **En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716; amd. Sec. 18, Ch. 38, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 38 near middle, after "mausoleums", deleted "crematories". Amendment effective February 10, 1993.

Cross-References

Acceptance of gifts in trust, 35-21-622.

Part 3

Disposition and Removal of Remains

Part Cross-References

Burial permits, 50-15-114, 50-15-405, 50-15-406.

35-21-301. Right to control disposition of remains — priorities — liability for cost. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) the surviving spouse;

(b) the surviving children of the decedent;

(c) the surviving parents of the decedent.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: **En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.**

35-21-302. Liability of person signing authorization for interment. A person signing an authorization for the interment of remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the authority to order interments. The person signing an authorization is personally liable for all damage occasioned by or resulting from a breach of the warranty.

History: **En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602; amd. Sec. 19, Ch. 38, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 38 in first sentence, after "interment", deleted "or cremation", after "interred" deleted "or cremated", and after "interments" deleted "or cremation"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person who represents that the person has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that the representation is untrue.

History: En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603; amd. Sec. 20, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 in first sentence, after "inter", deleted "or cremate" and in second sentence, after "interring", deleted "or cremating"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors, morticians, and crematory authority exempt from liability. An action may not lie against any mausoleum-columbarium authority relating to the remains of any person that have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. A licensed mortician, funeral director, crematory authority, crematory operator, or crematory technician is not liable for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604; amd. Sec. 21, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 deleted former second sentence that read: "Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced" and in second sentence, after "director", inserted "crematory authority, crematory operator, or crematory technician"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-305. Removal of remains — consent required — removal by permission of court. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) the surviving spouse;

(b) the surviving children of the decedent;

(c) the surviving parents of the decedent;

(d) the surviving brothers or sisters of the decedent.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. Notice of application to court for removal. Notice of application to the court for such permission shall be given at least 10 days prior thereto personally, or at least 15 days prior thereto if by mail to the mausoleum-columbarium authority and to the persons not consenting and to every other person on whom service of notice may be required by the court.

History: En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.

35-21-307. When removals excepted. Sections 35-21-305, 35-21-306 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place, nor does it apply to the disinterment of remains upon order of court or coroner.

History: En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.

Part 4

Dedication of Property — Property Rights in Plots

35-21-401. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

History: En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.

35-21-402. Filing plat and declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the plat or map dedicating the property exclusively to interment purposes.

History: En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.

35-21-403. Dedication complete on filing — tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums and columbariums constructed thereon and burial plots located therein shall be held, occupied, and used exclusively for interment purposes and shall be exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

35-21-404. Resurvey — amended map or plat. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.

35-21-405. Filed plat and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

History: En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805; amd. Sec. 161, Ch. 575, L. 1981.

Cross-References

General powers concerning property, 35-21-202.

35-21-406. Effect of dedication. After property is dedicated to interment purposes pursuant to 35-21-401 to 35-21-405, inclusive, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this chapter.

History: En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.

35-21-407. Encumbrances subordinate to dedication. All mortgages, deeds of trust, and other liens of any nature contracted, placed, or incurred after July 1, 1949, upon property which has been and was, at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this chapter or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed, or lien, dedicated to the mausoleum-columbarium purposes pursuant to this chapter shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication, and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.

35-21-408. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

History: En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.

Cross-References

Perpetuities, Art. XIII, sec. 6, Mont. Const.

Statutory rule against perpetuities, 72-2-1002.

35-21-409. Public thoroughfare or utility through dedicated property prohibited — consent. After dedication pursuant to this chapter and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it or of not less than two-thirds of the owners of interment plots therein.

History: En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.

35-21-410. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) that no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed;

(2) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: **En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.**

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-21-411. Notice of hearing on removal of dedication. (1) The notice of hearing provided in 35-21-410 shall be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(2) Said notice shall:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication;

(c) specify the time and place of the hearing.

History: **En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.**

35-21-412. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules as may be then in effect or thereafter adopted by the mausoleum-columbarium authority and subject to such other and further limitations, conditions, and restrictions as may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of such plot.

History: **En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.**

Cross-References

Record of ownership and transfer of plots required, 35-21-501.

Records of interments and cremations required, 35-21-502.

35-21-413. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: **En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.**

35-21-414. Separate conveyed plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: **En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.**

35-21-415. Selling for resale at profit — misdemeanor. It shall be unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.

35-21-416. Commission or rebate for sale — misdemeanor — exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.

35-21-417. Commission or rebate for causing disposition of body in mausoleum or columbarium — misdemeanor. A person who pays, causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission, bonus, rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or columbarium is guilty of a misdemeanor, and each violation constitutes a separate offense.

History: En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815; amd. Sec. 22, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 near end, before "mausoleum", deleted "crematory"; and made minor changes in style. Amendment effective February 10, 1993.

35-21-418. Property interest in plot — owner. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.

35-21-419. Spouse — vested right of interment. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.

35-21-420. Right of spouse not divested by conveyance — effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.

35-21-421. Descent of plot on death of owner when no interment made. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred therein are lawfully removed, the plot descends upon the death of the owner to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: **En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.**

35-21-422. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: **En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.**

Cross-References

Inheritance and estate tax exemptions, Title 72, ch. 16, part 3.

35-21-423. Affidavit showing death of owner and name of person entitled to plot authorizes use of plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to 35-21-418 to 35-21-421, inclusive, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: **En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.**

35-21-424. When plot becomes inalienable — family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: **En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.**

35-21-425. Family plot — persons who may be interred — priorities. (1) In a family plot, one crypt or one niche or interment space therein may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(2) If no parent or child survives, the right of interment goes in the order of death first to the spouse of any child of the record owner, and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: **En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.**

35-21-426. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: **En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.**

35-21-427. Termination of right of interment upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.

35-21-428. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.

35-21-429. Conveyance to joint tenants. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.

Cross-References

Joint interest defined, 70-1-307.

35-21-430. Death of joint tenant — effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

History: En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.

35-21-431. Affidavit showing death of joint tenant and identity of survivors authorizes use of plot. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.

35-21-432. Co-owners of plot — representative — authority not liable for interment pursuant to request of any co-owner. When there are several owners of a plot or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.

35-21-433. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.

Part 5
Records

35-21-501. Record of ownership and transfer of plots required. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.

History: En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.

Cross-References

Record of interment open to the public, 35-20-210.

Sale of interment plots, 35-21-412.

35-21-502. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.

Cross-References

Sale of interment plots, 35-21-412.

Record of ownership and transfer of plots required, 35-21-501.

35-21-503. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.

35-21-504. Repealed. Sec. 23, Ch. 38, L. 1993.

History: En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.

35-21-505. Repealed. Sec. 23, Ch. 38, L. 1993.

History: En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.

Part 6
Endowment Care and Trust Funds

Part Cross-References

Agency, Title 28, ch. 10.

Trust code, Title 72, ch. 33 through 36.

35-21-601. Authority to establish endowment care fund — commingling for investment. (1) Every mausoleum-columbarium authority which on or after July 1, 1949, maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: **En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.**

35-21-602. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: **En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.**

35-21-603. Investment of funds — use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested, and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both and the grounds in which they are situated and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: **En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.**

35-21-604. Permissible investment securities. The endowment care funds shall be invested, reinvested, and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: **En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).**

Cross-References

Permissible investments, 17-6-211.

Mausoleum-columbarium authority — investments, 35-21-609.

35-21-605. Plans for general care — collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

History: **En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.**

35-21-606. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: **En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.**

35-21-607. Agreement for endowment care of plot. Upon the application of the owner of any plot and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: **En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.**

35-21-608. Board of trustees of fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five in number for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

History: En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.

35-21-609. Directors of mausoleum-columbarium authority as trustees — investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.

Cross-References

Permissible investment securities, 35-21-604.

35-21-610. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.

35-21-611. Compensation of trustees. No sum in excess of 5% of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of such income divided by the number of trustees shall be less than $100, each trustee shall nevertheless be entitled to receive a minimum of $100 per year for his services as such trustee.

History: En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.

35-21-612. Annual financial report to be filed with district court. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.

35-21-613. Gifts for endowment care fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

History: En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.

35-21-614. Endowment fund and contributions for charitable purposes — validity of contributions. (1) The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.

35-21-615. Endowment care mausoleum-columbarium — amount of deposit required. (1) An endowment care mausoleum-columbarium is one which shall after July 1, 1949, deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) $5 for each niche;

(b) $15 for each crypt.

(2) The deposit shall be made not later than the 20th day of the month following the final payment on the purchase price of the plot.

History: En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.

35-21-616. Nonendowment care mausoleum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in 35-21-615.

History: En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.

35-21-617. Endowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

History: En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.

35-21-618. Annual report of endowment care mausoleum or columbarium to be filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain, as of the close of its last fiscal year:

(1) amount of principal of the endowment care fund;

(2) total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which shall actually show the financial condition of the trust.

History: En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.

35-21-619. Annual revision of report — verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.

35-21-620. Nonendowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds.

History: **En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.**

35-21-621. Violation a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of 35-21-615 to 35-21-620, inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature, or other publication shall be guilty of a misdemeanor.

History: **En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.**

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-622. Acceptance of gifts in trust. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to either or all of the following purposes:

(1) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(2) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated;

(3) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(4) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: **En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.**

Cross-References

Regulation of plants or shrubs, 35-21-211.

Power to acquire property, 35-21-217.

35-21-623. Contributions for charitable purposes — validity of contributions. (1) The sums paid in or contributed to the fund authorized by this chapter are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.

35-21-624. Director, officer, or trustee not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.

35-21-625. Illegal loan — misdemeanor. Every director or officer authorizing or consenting to a loan and the person who receives a loan in violation of this chapter are severally guilty of a misdemeanor.

History: En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-626. Merchandise trust fund. Whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter. Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Part 7

Desecration and Vandalism Regulation of Construction

Part Cross-References

Disinterment permits, 50-15-407.

35-21-701. Removal of remains with intent to sell or dissect — penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium or from any place where it is deposited while awaiting interment in a mausoleum or columbarium with intent to sell it or to dissect it without authority of law or from malice or wantonness shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.

35-21-702. Mutilation or removal of remains without authority — penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law shall be punished by imprisonment in the state penitentiary for not more than 3 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.

35-21-703. Attachment or detention of remains — misdemeanor. A person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

History: **En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.**

35-21-704. Destruction or injury of property — interference with funeral or interment — misdemeanor. (1) A person is guilty of criminal mischief and is punishable as provided in 45-6-101 who without right knowingly does any of the following:

(a) destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes a crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or a gate, door, fence, wall, post, or railing or an inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) destroys, cuts, breaks, removes, or injures a building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which a mausoleum or columbarium is located.

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or a person who is engaged in a funeral service or an interment.

History: **En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.**

Cross-References

Regulation of plants or shrubs, 35-21-211.

35-21-705. Civil liability — application of recovery. Any person violating any provision of 35-21-704 is liable in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: **En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.**

35-21-706. Exemptions from criminal mischief provisions. (1) The provisions of 35-21-704 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 35-21-704 do not apply to the removal of anything placed in a mausoleum or columbarium or the grounds within which it is situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated.

History: **En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.**

35-21-707. Converted or altered building subject to chapter. A building not erected for or which is not used as a place of interment of human remains which is converted or altered for such use by a mausoleum-columbarium authority is subject to this chapter.

History: **En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.**

35-21-708. Construction requirements — durability. No building or structure intended to be used for the interment of human remains shall be constructed and a building not used for the interment of human remains shall not be altered for use or used for interment purposes unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.

35-21-709. Repealed. Sec. 23, Ch. 38, L. 1993.

History: En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.

35-21-710. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums constructed after July 1, 1949, shall be of Class "A" fireproof construction.

History: En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.

35-21-711. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing Class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.

Cross-References

Municipal and county building codes, Title 50, ch. 60, part 3.

35-21-712. Construction in violation of chapter a public nuisance — penalty. An owner or operator of a mausoleum or columbarium erected in violation of this chapter is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than $500 or more than $5,000 in the case of a corporation or as provided in 45-8-111 in the case of an individual. In addition, the owner or operator is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case.

History: En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.

Cross-References

Public nuisance, 45-8-111.

35-21-713. Violations of chapter a misdemeanor. Every person who violates any provision of this chapter is guilty of a misdemeanor and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.

Cross-References

Misdemeanor penalty specified, 46-18-212.

TITLE 36

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